

2006 No. XXXX

FIRE SERVICES

PENSIONS

**The Firefighters' Pension Scheme Amendment (Scotland) Order
2006**

<i>Made</i> - - - -	June 2006
<i>Laid before Parliament</i>	9 th June 2006
<i>Coming into force</i> - -	1st July 2006

The Scottish Ministers, in exercise of the powers conferred by section 26(1) to (5) of the Fire Services Act 1947(a), sections 12 and 16 of the Superannuation Act 1972 (b) and of all other powers enabling them in that behalf hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Firefighters' Pension Scheme Amendment (Scotland) Order 2006.

(2) This Order shall come into force on 1 July 2006, and subject to paragraph (3) the amendments set out in the Schedule to this Order shall have effect from 6th April 2006.

(a) 1947 c.41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 c.21. Subsections (1) to (5) of section 26 continue to have effect for the purposes of the scheme established under that section as the Firemen's Pension Scheme and set out in the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), by article 3 of S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme by article 4(1) of S.I. 2004/2306. Section 26 of the 1947 Act was amended by section 1 of the Fire Services Act 1951 c.27, section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 c.65, section 33 of, and Schedule 3 to, the Theft Act 1968 c.60, sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 c.11, section 100 of, and Schedule 27 to, the Social Security Act 1973 c.38, section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 c.18, section 32 of the Magistrates' Courts Act 1980 (c.43), article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551), section 1 of the Police and Firemen's Pensions Act 1997 c.52 and section 256 of and Schedule 25 to the Civil Partnership Act 2004 (c.33). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1, (S.I. 1999/1750) and the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006, article 2 and the Schedule.

(b) 1972 c.11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 c.7. The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750). Section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1997. Section 16 is repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 c.21 but continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of article 3 of S.I. 2004/2306

(3) The following amendments shall have effect from **1st July 2006**

(i) The amendments made by paragraph 6 Ill-health awards;

(ii) The amendments made by paragraph 45 review of ill health and certain deferred pensions and;

(iii) The amendments made by paragraph 55 calculation of an ill-health award.

(4) In this Order—

“the Compensation Scheme” means the Firefighters’ Compensation Scheme set out in the Schedule to the Firefighters’ Compensation Scheme (Scotland) Order 2006**(a)**; and

“the Pension Scheme” means the Firefighters’ Pension Scheme, set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992**(b)**, as it has effect in Scotland**(c)**.

Amendment of the Pension Scheme

2. The Pension Scheme shall be amended in accordance with Schedule 1 to this Order.

Transitional provision

3.—(1) The amendments made by paragraph 6 (ill-health award) and 46 (cancellation of ill-health and injury pensions) of Schedule 1 to this Order shall not have effect in relation to a person in respect of whom a determination or decision relevant to the termination of his employment on grounds of ill-health (whether under Part H or Part K of the Pension Scheme) has been made before 1st July 2006.

(2) In a case to which paragraph (1) applies, rules B3 and K1 of the Pension Scheme shall continue to have effect in relation to such a person in the form in which they exist immediately before that date.

Revocation and consequential provision

4.—(1) So much of article 2(2) of the Firemen’s Pension Scheme Order 1992 as relates to the provisions specified in column (1) of Schedule 2 to this Order (provisions of the Pension Scheme superseded by the Compensation Scheme) is revoked as to Scotland.

(2) A reference in any document (whether made, served or issued before, on or after 6th April 2006) to a provision of the Pension Scheme that ceases to have effect by virtue of paragraph (1) shall, unless a contrary intention appears, be construed on and after that date as a reference to, the corresponding provision of the Compensation Scheme specified in column (2) of Schedule 2.

[Amendment of the Firefighters’ Pension Scheme (Amendment) (Scotland) Order 2005

5. The Firefighters’ Pension Scheme (Amendment) (Scotland) Order 2005**(d)** is amended as follows;

(1) Omit article 1(3)(a) (iii);

(a) S.I. 2006/xxxx.

(b) S.I. 1992/129, amended by S.I. 1997/2309 and 2851, S.I. 1998/1010, S.I. 2001/3649, S.S.I. 2001/310, S.S.I. 2004/385 and SSI 2005/566. The Scheme was made under section 26 of the Fire Services Act 1947 c.41. That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 c.21. The Firefighters’ Pension Scheme and subsections (1) to (5) of section 26 were continued in force, for the purposes of the scheme established under that section as the Firemen’s Pension Scheme, by S.I. 2004/2306. The name of the scheme was changed by article 4(1) of S.I. 2004/2306.

(c) The Secretary of State’s functions under section 26 of the Fire Services Act 1947, in so far as they were exercisable in relation to Scotland, were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(d) S.S.I. 2005/566.

(2) In article 1(3) (b)—

- (a) substitute “amendments” for “amendment”; and
- (b) after “widows)”, insert “and paragraph 25 (relating to spouse’s requisite benefit and temporary pension)].”]

Authorised to sign by Scottish Ministers

St Andrew's House, Edinburgh

SCHEDULE 1

Article 2

AMENDMENT OF THE FIREFIGHTERS' PENSION SCHEME

1. In rule A3 (exclusive application to regular firefighters)—
 - (a) in paragraph (1), for “paragraphs (3) and (4)”, substitute “paragraphs (3) to (5)”; and
 - (b) after paragraph (4), add—

“(5) This Scheme ceases to apply in relation to—

 - (a) a person who takes up employment with a fire and rescue authority on or after 6th April 2006,
 - (b) a person who, having made an election under rule G3(1) not to pay pension contributions, cancels that election on or after 6th April 2006, and
 - (c) the spouse, civil partner or dependant of such a person,on the day on which a scheme, other than the Firefighters' Compensation Scheme 2006^a, is brought into operation under section 34 of the Fire and Rescue Services Act 2004.”^(b).
2. Omit rule A9 (qualifying injury).
3. In rule A10 (disablement)—
 - (a) in paragraph (2), for “Subject to paragraph (3), disablement”, substitute “Disablement”; and
 - (b) omit paragraph (3).
4. Omit rule A11 (death or infirmity resulting from injury).
5. For rule B2 (short service award), substitute—

“Short service award

B2.—(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who—

- (a) retires at normal pension age or on or after attaining the age of 65;
- (b) is entitled to reckon at least two years' pensionable service; and
- (c) is not entitled to any other award under this Part.

(2) A person to whom this rule applies becomes entitled on retiring—

- (a) if he is entitled to reckon at least two years' pensionable service, to a short service pension calculated in accordance with Part II of Schedule 2; and
- (b) in any other case, to a short service gratuity of an amount equal to the aggregate of his pension contributions.”.

6. For rule B3 (ill-health award)^(c), substitute—

“Ill health awards

B3.—(1) This rule applies to a regular firefighter who is required to retire under rule A15 (compulsory retirement on grounds of disablement) unless, immediately before his retirement, an election under rule G3 not to pay pension contributions had effect.

^a SSI 2006/***

^(b) [Need a note on section 34 being devolved].

^(c) Rule B3 was amended by S. S.I. 2005/566 Sch. para.14.

(2) A regular firefighter who is entitled to reckon at least 2 years' pensionable service becomes entitled on retiring—

- (a) where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, he is capable of undertaking regular employment outside the fire and rescue service, to a lower tier ill-health pension calculated in accordance with paragraph 2 or 3 (as the case may be) of Part III of Schedule 2;
- (b) where, in the opinion of an independent qualified medical practitioner, obtained in accordance with rule H1, he is incapable of undertaking regular employment outside the fire and rescue service, to—
 - (i) a lower tier ill-health pension calculated in accordance with paragraph 2 or 3 (as the case may be) of Part III of Schedule 2; and
 - (ii) a higher tier ill-health pension determined in accordance with paragraph 5 of that Part.

(3) A firefighter who is not entitled to a pension under paragraph (2), becomes entitled on retiring—

- (a) to a short service pension calculated in accordance with Part II of Schedule 2; and
- (b) to a short service gratuity of an amount equal to the aggregate of his pension contributions.

(4) In paragraph (2) “regular employment” means employment in any period of 12 months for an average of not less than 30 hours in each week.

(5) Where the person has the role of Station Manager B or a superior role, the calculation required by paragraph (2) shall be made as if his normal pension age were 60.

7. Omit rule B4 (injury award).

8. In rule B5 (deferred pension), in paragraph (2)(b), for “rules B1 to B4”, substitute “rules B1 to B3”.

9. In rule B6 (repayment of aggregate pension contributions)—
in paragraph (1)—

- (i) after “regular firefighter” (in the first place where those words appear), insert “with less than 2 years' pensionable service”; and
- (ii) in sub-paragraph (b), for “rules B1 to B5”, substitute “rules B1 to B3, B5”; and

10. In rule B7 (commutation - general provision)—

- (a) in paragraph (7), for “6 months after his retirement”, substitute “the day before the pension comes into payment”;
- (b) for paragraph (8), substitute—
“(8) Notice of commutation takes effect on the date of the person's retirement.”;
- (c) in paragraph (9), for sub-paragraph (b), substitute—
“(b) within three months of the date of his retirement, pay him the lump sum; but where payment of the pension had commenced before commutation, that sum shall be reduced by the difference between the aggregate payments made in respect of the pension and the aggregate payments that would have been made in respect of it if it had been reduced from the date of retirement.”; and
- (d) , in paragraph (11), after “I 4” insert “or rules 2 and 3 of Part 7 of the Firefighters' Compensation Scheme”.

11. In rule B8 (commutation – small pensions), in paragraph (1), for the words from “does not exceed” to the end, substitute “does not exceed £750, or any greater amount prescribed by regulations for the time being in force under Part 1 of Schedule 29 to the Finance Act 2004, the fire and rescue authority may commute the pension for a gratuity”.

12. In rule B9 (allocation), in paragraph (16), after “I 4” insert “or rules 2 and 3 of Part 7 of the Firefighters’ Compensation Scheme”.

13. In rule B10 (limitation of commuted or allocated portion of pension), in paragraph (2), after “I 4” insert “or rules 2 and 3 of Part 7 of the Firefighters’ Compensation Scheme”.

14. For rule B11 (deduction of tax from certain awards), substitute—

“Deduction of tax and lifetime allowance charge

B11. A fire and rescue authority shall deduct from any payment which is chargeable to tax, or subject to a lifetime allowance charge within the meaning of the Finance Act 2004(a), the amount of tax charged or the amount of charge to be recovered.”.

15. In rule C1 (spouse’s ordinary pension)—

- (a) in paragraph (1)(c), after “injury pension”, insert “under the Compensation Scheme”;
- (b) in paragraph (2), omit “, subject to paragraph (3),”;
- (c) in paragraph (2A)(b), for “Subject to paragraph (3), the”, substitute “The”; and
- (d) omit paragraphs (3) to (6).

16. Omit rules C2 (spouse’s special award) and C3 (spouse’s augmented award).

17. In rule C5 (limitation on award to widow by reference to date of marriage)(c)—

- (a) in paragraph (1), omit “, a special award under rule C2, an augmented award under rule C3”;
- (b) in paragraph (2), omit “or other award” and “, subject in the case of a civil partner, to paragraph (3),”;
- (c) in paragraph (3), omit “or other award”.

18. In rule C6 (widow’s requisite benefit and temporary pension)(d)—

- (a) for paragraph (1)(b), substitute “(b) rule C4 does not apply”; and
- (b) omit paragraph (5).

19. For rule C7 (spouse’s award where no other award payable)(e), substitute—

“Award to spouse or civil partner where no other award payable

C7.—(1) The rule applies where a person by whom pension contributions have at any time been payable under rule G2 dies while serving as a regular firefighter before the end of the tax year preceding that in which he would have attained state pensionable age.

(2) Where this rule applies, the surviving spouse or civil partner is entitled, in respect of the first 13 weeks following the death, to a temporary pension calculated as if rule C6(2)(a) and (3) had applied.”.

20. In rule C8 (limitations where spouses living apart)(f)—

- (a) in paragraph (1), for “rules C1 to C7”, substitute “rules C1 and C4 to C7”;
- (b) in paragraphs (2) and (3), for “an award under rule C1, C2, C3 or C4”, substitute “a pension under rule C1 or C4”; and
- (c) in paragraph (5), omit “, C2 , C3”.

(a) See section 214 of the Finance Act 2004 (c.xx).

(b) Paragraph (2A) was inserted by S.I. 2005/3228, Sch.1, para.3.

(c) Rule C5 was substituted by S.S.I. 2005/566, Sch., para 24 and S.I. 2005/3228, Sch.1, para.7.

(d) Rule C6 was substituted by S.I. 2005/566, Sch., para.25 and amended by S.I. 2005/3228, Sch.1, para 8.

(e) Rule C7 was amended by S.I. 2005/3228, Sch 1, para.9.

(f) Rule C8 was amended by S.I. 2005/3228, Sch.1, para.10.

21. In rule D1 (child’s ordinary allowance), in paragraph (1)(c), after “injury pension”, insert “under the Compensation Scheme”.

22. Omit rules D2 (child’s special allowance) and D3 (child’s special gratuity).

23. For rule D5 (child’s allowance or special gratuity: limitations)(a), substitute—

“Child’s allowance

D5.—(1) No allowance or gratuity under this Part shall be paid—

- (a) in respect of a child born on or after the relevant date who is not a child of a marriage that took place, or of a civil partnership that was formed, before that date, or
- (b) by reason of his being a step-child, in respect of a child of a spouse whose marriage to the deceased took place, or of a civil partner whose civil partnership with the deceased was formed, on or after the relevant date, or
- (c) by reason of his being substantially dependent on the deceased, in respect of a child who was not so dependent before the relevant date, or
- (d) by reason of his being an adopted child, in respect of a child adopted on or after the relevant date, or
- (e) except in the case of a legitimate or adopted child of the deceased, in respect of a child who was not substantially dependent on the deceased at the time of the death,

the relevant date being in each case the date on which the deceased ceased to be a regular firefighter.

(2) Subject to paragraph (3), no allowance under this Part shall be paid in respect of a person who has reached the age of 23.

(3) An allowance under this Part may be paid in respect of a person who has reached the age of 23 if, in the opinion of the scheme administrator, he was at the date of the member’s death dependent on the member by reason of physical or mental impairment.

(4) Part IV of Schedule 4 has effect for the reduction, in certain circumstances, of allowances under this Part.”

24. In rule E1 (lump sum death grant), in paragraph (1), for the words after “payable”, substitute—

“unless, at the time of his death—

- (a) he was 75 or more; or
- (b) an election under rule G3 not to pay pension contributions had effect.”.

25. Omit rule E2 (adult dependent relative’s special pension).

26. In rule E4 (payment of balance of contributions to estate), in paragraph (2)(b)—

- (a) after “injury pension”, insert “under the Compensation Scheme”; and
- (b) for “rule B4”, substitute “that Scheme”.

27. In rule E5 (gratuity in lieu of surviving spouse’s pension)(b)—

- (a) in paragraph (1), from the words from “does not exceed” to the end, substitute “does not exceed £750, or any greater amount prescribed by regulations for the time being in force under Part 1 of Schedule 29 to the Finance Act 2004, the fire and rescue authority may commute for a gratuity the pension or so much of it as may be commuted without contravening rule E7”; and

(a) Rule D5 was amended by S.S.I. 2005/566, Sch. para.28 and 2005/3228, Sch.1, para.14 and Sch.2, para.1.
(b) Rule E5 was amended by S.I. 2005/3228, Sch 1, para.17.

- (b) in paragraph (2)—
 - (i) in sub-paragraph (a), omit “or C2”; and
 - (ii) at the end of sub-paragraph (c), insert “and”; and
 - (iii) after sub-paragraph (c), insert—
 - “(d) the deceased spouse or civil partner died before his 75th birthday.”.

28. In rule E7 (limitation on discretion to commute pension or allowance for gratuity)—

- (a) for paragraph (2), substitute—
 - “(2) The fire and rescue authority may not under rule E5 or E6 commute the whole or any part of a pension or allowance for a gratuity the actuarial value of which exceeds—
 - (a) the permitted amount; or
 - (b) the commutation limit specified for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule) in paragraph 7(4) of that Part (trivial commutation lump sum)”(a);
- (b) in paragraph (5), after “I.4”, insert “or rule 2 or rule 3 of Part 7 of the Compensation Scheme”; and
- (c) after paragraph (5), add—
 - “(6) The payment of a gratuity on the commutation of the whole or any part of a pension payable as mentioned in rule E5 must be made before the date on which the deceased would have attained the age of 75.”.

29. In rule E8 (increase of pensions and allowances during first 13 weeks)(b)—

- (a) in paragraph (1), omit “, special”;
- (b) in paragraph (2), after “payable”, insert “under this Scheme or the Compensation Scheme”;
- (c) for paragraph (4), substitute—
 - “(4) For the purposes of paragraph (3)(b), any reduction in the deceased’s pension under paragraph 3 of Part V of Schedule 2 (additional benefits) or under Part VIII of that Schedule (uprating of widows’ pensions) shall be disregarded.”;
- (d) in paragraph (5)—
 - (i) omit “, special”; and
 - (ii) after “allowance”, insert “under this Scheme and to a child’s special allowance under the Compensation Scheme”; and
- (e) in paragraph (7), after “payable”, insert “under this Scheme or an injury pension under the Compensation Scheme”.

30. In rule F1 (reckoning of and certification as to pensionable service), in paragraph (6), after “gratuity”, insert “under this Scheme, or a pension or gratuity under the Compensation Scheme”.

31. In rule F2 (current service), for paragraphs (3) and (4), substitute—

“(3) A regular firefighter may, by written notice given to his employing authority at any time, require them to reckon as pensionable service all or part of any period of absence from duty without pay (excluding absence for maternity, paternity or adoption leave) (the “reckonable period”).

(4) Where notice is given under paragraph (3), the firefighter shall, within 6 months of giving that notice, pay to the authority—

- (a) the contributions (including any such additional or further contributions as are mentioned in rule G4) that he would have been liable to pay in respect of the

(a) 2004 c.12.

(b) Rule E8 was amended by S.I. 2005/3228, Sch.1, para.18.

reckonable period (in accordance with rule G2(1)) if he had been paid at his normal rate; and

- (b) subject to paragraph (5), such amount as shall be notified to him by the authority as the amount that would have been payable by them if a notional funding system applied and an employers contribution was payable by the authority as part of the overall cost of pensionable service counting for the reckonable period.

(5) A fire and rescue authority may treat as paid the amount notified under sub-paragraph (b) of paragraph (4); and where they do so, the requirements of that sub-paragraph shall cease to apply.

(6) Nothing in paragraph (3) requires a fire and rescue authority to reckon as pensionable service any reckonable period where—

- (a) in a case to which paragraph (5) applies, the requirements of paragraph (4)(a) have not been met;
- (b) in any other case, the requirements of paragraph (4)(a) and (b) have not been met.

(7) 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.”.

32. In rule F5 (period during which injury pension was payable)(a), for paragraph (a), substitute—

- “(a)(i) on retiring from a brigade before 2nd August 2005, or from employment with a fire and rescue authority before 6th April 2006, became entitled to an injury pension under rule B4 (as it existed before that date)**b.**; or
- (ii) on retiring from employment with a fire and rescue authority on or after 6th April 2006, becomes entitled to an injury pension under the Compensation Scheme, and”.

33. In rule G1 (pensionable pay and average pensionable pay)—

- (a) in paragraph (2), omit the words after “for that year”; and
- (b) in paragraph (4)—
 - (i) for sub-paragraph (a), substitute—

“(a) for the purposes of rule C7 (spouse’s award where no other award payable), the date of the person’s last day of service as a regular firefighter,”; and
 - (ii) in sub-paragraph (b), after “purposes”, insert “of this Scheme”.

34. In rule G2 (pension contributions)—

for paragraph (1), substitute—

“(1) A regular firefighter shall, except where an election under rule G3 has effect, pay pension contributions to the fire and rescue authority at the rate specified in paragraph (1A).

(1A) The rate is—

- (a) for a person who takes up employment with the authority on or after 6th April 2006, 8.5 per cent of his pensionable pay;
- (b) in any other case, 1p less than 11 per cent of his pensionable pay.”; and

35. In rule G3 (election not to pay pension contributions)—

- (a) in paragraph (2), for “paragraph (3)”, substitute “paragraphs (3) and (3A)”;
- (b) after paragraph (3), insert—

“(3A) Where—

(a) Rule F5 was amended by S.S.I. 2005/566, Sch. para.41.

(b) Rule B4 was revoked by the Firefighters’ Pension Scheme (Amendment) (England) Order 2006.

- (a) a person gives notice under paragraph (1) within 3 months of taking up employment with the authority as a regular firefighter; and
- (b) no transfer of pension rights from another pension scheme has been made in respect of him,

the election shall be treated as given on his first day of employment and the fire and rescue authority shall repay the pension contributions paid by him.”.

36. In rule G6 (election to purchase increased benefits), in paragraph (1), omit “and rule G9”.

37. In rule G7 (payment of periodic contributions for increased benefits)—

- (a) in paragraph (1), for “paragraphs (2) to (4)”, substitute “paragraphs (2) and (3)”; and
- (b) for paragraphs (3) to (4)(a), substitute—

“(3) If the fire and rescue authority are satisfied that payment of the periodical contributions is causing, or is likely to cause, financial hardship they may consent to the discontinuance of payment for such period as they think fit.”.

38. Omit rule G9 (pension debit members: restriction on replacement of debited rights).

39. In rule H1 (determination by fire authority), omit paragraph (2)(c) and (d).

40. In rule I2 (awards to servicemen)(b), in paragraph (3), omit “or by a qualifying injury”.

41. In rule I3 (awards on death of servicemen)(c), in paragraph (3), omit “or by a qualifying injury”.

42. Omit rule I4 (servicemen who resume service as regular firefighters).

43. In rule J1 (guaranteed minimum pensions)—

- (a) in paragraph (5), after “this Scheme”, insert “or to an injury pension under the Compensation Scheme”; and
- (b) in paragraph (6), after “injury pension”, insert “under the Compensation Scheme”.

44. Omit rules J3 (whole-time member of brigade who is not a regular firefighter), J4 (part-time member of brigade) and J5 (members of brigade other than regular firefighters:supplementary).

45. For rule K1 (cancellation of ill-health and injury pensions), substitute—

“Review of ill-health and certain deferred pensions

K1.—(1) So long as a person—

- (a) is in receipt of an ill-health pension, and
- (b) has not attained state pension age,

the fire and rescue authority shall consider, at such intervals as they think proper, whether he has become capable of carrying out any duty appropriate to the role from which he retired on grounds of ill-health.

(2) So long as a person—

- (a) is in receipt of a higher tier ill-health pension; and
- (b) has not attained state pension age,

the authority shall also consider, at such intervals as they think proper, whether he has become capable of undertaking regular employment.

(3) So long as a person—

(b) Rule I2 was amended by S.S.I. 2005/566, Sch. para.58.

(c) Rule I3 was amended by S.S.I. 2005/566, Sch. para.59 and 2005/3228, Sch.1, para.19.

- (a) is entitled under rule B5 to a deferred pension; and
- (b) has begun to receive payments in respect of the pension on becoming permanently disabled,

the authority shall also consider, at such intervals as they think proper, whether he has become capable—

- (i) of carrying out any duty appropriate to the role from which he retired on grounds of ill-health; or
- (ii) of undertaking regular employment.

(4) In this Part, “regular employment” means employment in any period of 12 months for an average of not less than 30 hours in each week.

Consequences of review

K1A.—(1) If, on such consideration as is mentioned in rule K1(2), it is found that a person has become capable of undertaking regular employment, the authority shall immediately terminate his higher tier ill-health pension.

(2) His lower tier ill-health pension shall continue to be paid

(3) If, on such consideration as is mentioned in rule K1, it is found that the person has become capable of performing the duties appropriate to the role from which he retired on grounds of ill-health, the authority may make him an offer of employment in that role.

(4) Where an offer under paragraph (4) is accepted by a person who is in receipt of a lower tier ill-health pension, his entitlement to that pension shall cease with immediate effect.

(5) Where a person in receipt of a lower tier ill-health pension declines an offer under paragraph (4), his entitlement to that pension shall cease with immediate effect; and he shall then become entitled to a deferred pension under rule B5”.

46. Omit rule K2 (reassessment of injury pension).

47. In rule K3 (reduction of award in case of default)(a), in paragraph (1), omit “or injury”.

48. In rule K5 (withdrawal of pension on conviction of certain offences)(b), in paragraph (4), omit “, other than an injury pension,”.

49. In rule L1(authorities responsible for payment of awards)(c), omit paragraphs (2), (5) and (6).

50. In rule L3 (payment of awards)(d), in paragraph (7), omit “other than an injury gratuity under rule B4,”.

51. In rule L4 (prevention of duplication)(e), in paragraph (1), at the end insert “or the Compensation Scheme”.

52. Omit rule L4A (prevention of duplication: other injury awards for persons who are both regular and retained firefighters)(f).

53. In rule L4B, (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters)(g)-

(a) Rule K3 was amended by S.S.I. 2005/566, Sch. para.70.

(b) Rule K5 was amended by S.S.I. 2005/566, Sch. para.72.

(c) Rule L1 was amended by S. S.I. 2005/566, Sch, para.73.

(d) Rule L3 was amended by S. S.I. 2005/566, Sch., para.75.

(e) Rule L4 was amended by S.S.I. 2005/566, Sch., para.76.

(f) Rule L4A was inserted by S. S.I. 2005/566, Sch., para.77.

(g) Rule L4B was inserted by S. S.I. 2005/566, Sch., para.77, and amended by S.I. 2005/3228, Sch.1, para.26.

(1) in paragraph (3)(a), for “rule C2” insert “rule 1 of Part 3 of the Compensation Scheme” and for “rule J4(4)” insert “paragraph 6 of rule 2 of Part 9 of the Compensation Scheme”.

(2) in paragraph (3)(b), for “rule C3” insert “rule 2 of Part 3 of the Compensation Scheme” and for “rule J4(4)” insert “paragraph 6 of rule 2 of Part 9 of the Compensation Scheme”.

(3) In paragraph (3)(c), for “rule D2” insert “rule 1 of Part 4 of the Compensation Scheme” and for “rule J4(5)” insert “paragraph 7 of rule 2 of Part 9 of the Compensation Scheme”.

(4) In paragraph (3)(d), for “rule D3” insert “rule 2 of Part 4 of the Compensation Scheme” and for “rule J4(5)” insert “paragraph 7 of rule 2 of Part 9 of the Compensation Scheme”.

54. In Schedule 1 (interpretation), in Part I (glossary of expressions)(a)—

(a) after the entry for the expression “club scheme”, insert—

(i) in the first column “Compensation Scheme”; and

(ii) in the second column, “the Firefighter’s Compensation Scheme (Scotland) 2006, set out in the Schedule to the Firefighters’ Compensation Scheme (Scotland) Order 2006”;

(b) omit the entry (both columns) for the expression “qualifying injury”.

55. In Schedule 2 (personal awards)(b)—

(a) for Part III (ill-health pension), substitute—

“PART III

ILL-HEALTH PENSION

1. Paragraph 2 has effect subject to paragraph 4 and Parts VIA, VII and VIII of this Schedule.

2. Subject to paragraph 3, the amount of a lower tier ill-health pension, is an amount equal to that which the person concerned would have received if his employment had ceased in circumstances in which he would have been entitled to immediate payment of a deferred pension (calculated in accordance with Part VI of this Schedule).

3. Where the person concerned has less than 5 years’ pensionable service, the amount of the lower tier ill-health pension is that found by applying the formula—

$(A \times B) \div 60$, where—

A is the person’s average pensionable pay; and

B is the greater of one year and the period in years of his pensionable service.

4. Where the person has the role of Station Manager B or a superior role, the calculation required by paragraph 2 shall be made as if his normal pension age were 60.

5.—(1) The amount of a person’s higher tier ill-health pension is the amount determined by deducting from the amount ascertained in accordance with sub-paragraph (2) or paragraph 6, as his circumstances require, the amount of his lower-tier ill-health pension.

(2) Subject to paragraph 6, the amount referred to in sub-paragraph (1) as to be ascertained in accordance with this sub-paragraph is—

(a) if the person concerned has at least 5 but not more than 10 years’ pensionable service, the amount found by applying the formula—

$(2 \times A \times C) \div 60$, where—

A the person’s average pensionable pay; and

(a) Part 1 of Schedule 1 was amended by S.S.I. 2005/2980, Sch., para.88, and 2005/3228, Sch.1, para.27.

(b) Schedule 2 was amended by S.S.I. 2005/566, Sch., para.89.

C is the period in years of his pensionable service; or

- (b) if the person concerned has more than 10 years' pensionable service, the greater of the amounts found by applying the formulae—

$\{(20 \times A) \div 60\}$ and $\{(7 \times A \div 60) + (A \times D \div 60) + (2 \times A \times E \div 60)\}$, where—

A is the person's average pensionable pay;

C is the period in years of his pensionable service;

D is the period in years of his pensionable service up to and including 20 years, and

E is the period in years by which his pensionable service exceeds 20 years.

6.—(1) Where—

- (a) if the person had continued to serve until he reached normal pension age, he would have become entitled to an ordinary or short service pension (“the notional retirement pension”), and
- (b) the amount calculated in accordance with paragraph 5(2)(a) or (b) exceeds the amount of the notional retirement pension,

the amount referred to in sub-paragraph (1) as to be ascertained in accordance with this paragraph is that of the notional retirement pension.

(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay.”;

- (b) omit Parts IV (short service or ill-health gratuity) and V (injury awards); and
- (c) in Part VIA (calculation of awards for part-time service), in paragraph 1, omit sub-paragraphs (d) and (e).

56. In Schedule 3 (awards on death: spouses)(a)—

- (a) omit Part II (spouse's special pension); and
- (b) in Part IV (pension for surviving spouse of post-retirement marriage), in paragraph 1—
- (i) in sub-paragraph (1), omit “a special award under rule C2 or an augmented award under rule C3,”; and
- (ii) for sub-paragraph (2), substitute—

“(2) For the purposes of this paragraph, paragraph 1 of Part I has effect as if the reference in sub-paragraph (1)(a) to the base pension were a reference to the appropriate proportion of the base pension.”.

57. In Schedule 4 (awards on death-children)—

- (a) in Part I (child's ordinary allowance), in paragraph 2(2), for “, rule B9(12) (allocation) or paragraph 2 of Part V of Schedule 2 (reduction in injury award)”, substitute “or rule B9(12) (allocation)”;
- (b) omit Part II (child's special allowance)”; and
- (c) in Part IV (reduction in child's allowance during full-time remunerated training)—
- (i) in paragraph 1(1), omit “, D2”;
- (ii) in paragraph 2(2), for “one of the relevant provisions, that is to say paragraph 1(2)(b) and (3)(b) of Part I and paragraphs 2(b) and 3(b) of Part II of this Schedule, applies”, substitute “either sub-paragraph (2)(b) or (3)(b) of paragraph 1 of Part I of this Schedule applies”.

58. In Schedule 5 (awards on death-additional provisions), omit Part I (adult dependent relative's special pension).

(a) Schedule 3 was amended by S.I. 2005/566 Sch., para.90

59. In Schedule 9 (appeals), in paragraph 8(2A)(a), for “10”, substitute “21”.

60. Omit Schedule 10 (servicemen: increased awards).

SCHEDULE 2

Article 4(1)

PROVISIONS OF THE PENSION SCHEME SUPERSEDED BY PROVISIONS OF THE COMPENSATION SCHEME

<i>(1)</i> <i>Provision of Pension Scheme revoked</i>	<i>(2)</i> <i>Corresponding provision of Compensation Scheme</i>
Rule A9 (qualifying injury)	In Part 1, rule 7
Rule A10 (disablement)	In Part 1, rule 8
Rule A11 (death or infirmity resulting from injury)	In Part 1, rule 9
Rule B4 (injury award)	In Part 2, rule 1
Rule C2 (spouse’s special award)	In Part 3, rule 1
Rule C3 (spouse’s augmented award)	In Part 3, rule 2
Rule D2 (child’s special allowance)	In Part 4, rule 1
Rule D3 (child’s special gratuity)	In Part 4, rule 2
Rule E2 (adult dependent relative’s special pension)	In Part 5, rule 1
Rule I4 (servicemen who resume service as regular firefighters)	In Part [7], rule 4
Rule J3 (whole-time member of brigade who is not a regular firefighter)	In Part [8], rule 1
Rule J4 (part-time member of brigade)	In Part [8], rule 2
Rule J5 (members of brigade other than regular firefighters – supplementary)	In Part [8], rule 3
Rule K2 (reassessment of injury pension)	In Part [9], rule 2
In Schedule 1, Part I, the entry relating to “qualifying injury”	In Part 1, rule 2(1)
In Schedule 2, Part V (injury awards)	Schedule 1
In Schedule 3, Part II (spouse’s special pension)	Schedule 2
In Schedule 4, Part II (child’s special allowance)	Schedule 3
In Schedule 5, Part I ((adult dependent relative’s special pension)	Schedule 4
Schedule 10 (servicemen – increased awards)	Schedule [6]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters’ Pension Scheme (set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992) as it has effect in Scotland (“the Pension Scheme”).

The amendment of rule A3 and the substitution of rule G2(1) anticipate the making of a new pension scheme by order under section 34 of the Fire and Rescue Services Act 2004. Section 34 (1) to (5) has been executively devolved to Scottish Ministers by SI 2005/849. The rule A3

(a) Paragraph 8(2A) was inserted by S.I.

amendments 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 6th 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 has the effect of requiring persons who take up employment with a fire and rescue authority as firefighters on or after 6th April 2006 to make pension contributions at a lower rate than is required of firefighters whose employment began before that date. It is envisaged that 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.

Some amendments specified in Schedule 1 to this Order remove from the Pension Scheme provisions relating to non-contributory compensation for death and injury. These provisions are re-enacted in the Firefighters' Compensation Scheme, which is set out in the Schedule to the Firefighters' Compensation Scheme Order 2006 (SI. 2006/xxx). Schedule 2 to this Order lists the provisions of the Pension Scheme that cease to have effect, as to England, having been superseded by corresponding provisions of the Firefighters' Compensation Scheme.

Other amendments specified in Schedule 1 to this Order are consequential on the removal of those provisions or relate to changes in the regulation of pension schemes brought about by the Finance Act 2004 (c.12), as amended by the Finance Act 2005 (c.7).

Rule B3 and Part III of Schedule 2 to the Pension Scheme, which provide for the payment and calculation of pensions awarded to regular firefighters whose employment ceases by reason of ill-health, are substituted. Firefighters who are found by an independent qualified medical practitioner to be capable of undertaking employment outside the fire and rescue service for an average of at least 30 hours per week over a notional period of 12 months (whether or not they in fact take up any employment) will be entitled to a lower tier ill-health pension. Those who are found to be incapable of undertaking such employment will be entitled to a higher tier ill-health pension. There is no change in the method of calculating the newly-styled "higher tier" ill-health pension (paragraph 4 of Part III of Schedule 2). Nor is there any change in the method of calculating the newly-styled "lower tier" ill-health pension for those regular firefighters who have less than 5 years' pensionable service (paragraph 3 of that Part). The method of calculating other "lower tier" ill-health pensions (paragraph 2 of that Part) has the effect that a pensioner who has 5 or more years' pensionable service will be entitled to immediate payment of an amount calculated as if he had been entitled to immediate payment of a deferred pension under rule B5 of the Pension Scheme (the calculation is set out in Part VI of Schedule 2).

Rule K1 is amended to allow a fire and rescue authority to replace a higher tier ill-health pension with a lower tier ill-health pension where, on a review of the pensioner's condition, it is established that he is capable of undertaking employment in any period of 12 months for an average of not less than 30 hours in each week.

The effect of the amendment to paragraph 8(2A) of Schedule 9 is that a person who withdraws his 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 current provision refers to withdrawal within 10 days of the appointed date.

The opportunity has been taken to correct two errors that arose in amending instruments made in 2005. Rule C5 of the Pension Scheme (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership) was substituted by paragraph 7 of Schedule 1 to the Firefighters' Pension Scheme (Civil Partnership Amendments) (England and Scotland) Order 2005 (S.I. 2005/3228). In paragraph (2) of the substituted rule, the words " , subject in the case of a civil partner, to paragraph (3)," were included in error and are now omitted. The second error relates to article 1(3)(c) of the Firefighters' Pension Scheme (Amendment) (England) Order 2005 (S.I. 2005/2980). That provision gave retrospective effect, to 1st March 1992 (the date on which the Pension Scheme came into force), to rule C5 of the Pension Scheme. It should have given similar retrospective effect to rule C6 of the Pension Scheme, which relates to the requisite benefit and temporary pensions awarded to surviving spouses and civil partners, which was amended in

2005 to reflect the fact that the surviving spouse of a deceased firefighter may be either a widow or a widower. Article 5 of this Order amends article 1(3)(c) so that rule C6 is given retrospective effect to 1st March 1992.

The power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972.

A full regulatory impact assessment has not been produced for this Order, as it has no impact on the costs of business, charities or voluntary bodies.