

2006 No. XXXX

FIRE SERVICES

PENSIONS

**The Firefighters' Pension Scheme Amendment (Scotland) Order
2007**

<i>Made</i> - - - -	2007
<i>Laid before Parliament</i>	2007
<i>Coming into force</i> - -	2007

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 2007.

(a) 1947 c.41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 c.21.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

(2) This Order shall come into force on xxxxx, but the amendments made by article 2 and the Schedule shall have effect , subject to article 3, from 6 April 2006.

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

2. Schedule 2 to the Firefighters' Pension Scheme Order 1992(a) as it has effect in Scotland shall be amended in accordance with the Schedule to this Order is amended as follows;

Authorised to sign by Scottish Ministers

St Andrew's House,
Edinburgh

(a) 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, SSI 2005/566 and SSI 2006/342. 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

SCHEDULE

Article 2

AMENDMENT OF THE FIREFIGHTERS' PENSION SCHEME

3. In rule B2 (short service award), in paragraph (2), for sub-paragraph (a) substitute—

“(a) if—

- (i) he is entitled to reckon at least two years' pensionable service; or
- (ii) a transfer value in respect of his rights under a personal pension scheme has been paid to the scheme,

to a short service pension calculated in accordance with Part II of Schedule 2; and”

4. In rule B3 (ill-health awards), in paragraphs (3) and (4), omit “outside the fire and rescue service”.

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

“**B5.**—(1) This rule applies to a regular firefighter—

- (a) who is entitled to reckon at least 2 years' pensionable service, or
- (b) in respect of whom a transfer value attributable to his rights under a personal pension scheme has been paid into the scheme, or
- (c) who is entitled to reckon pensionable service by virtue both of service as a regular firefighter and of a period of other employment which together amount to 2 years or more, or
- (d) who 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—
 - (i) deducting from it—
 - (aa) any period during which an election under rule G3 not to pay contributions had effect, and
 - (bb) any period of maternity or adoption leave which does not count as pensionable service as a result of rule F2A or G2A, and
 - (ii) aggregating the remainder with his pensionable service, amounts to 2 years or more.”.

6. In rule B7 (commutation: general provision)—

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

“(2A) A person who retires with an ill-health award may not commute any portion of a higher tier ill-health pension.”.

7. In rule E5 (lump sum in lieu of surviving spouse's or civil partner's pension)—

- (a) in paragraph (1)—
 - (i) after “subject to”, insert “paragraph (2) and”; and
 - (ii) after “commute the”, insert “the whole or any part of the”;
- (b) in paragraph (2), for the words from “for a lump sum” to the end, substitute “the whole or any part of the pension for a lump sum”; and
- (c) in paragraph (3), after “commute”, insert “the whole or any part of”.

8. For rule E6 (lump sum in lieu of child’s allowance), substitute—

“Lump sum in lieu of child’s allowance

E6.—(1) Where the amount of a child’s allowance under Part D, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (trivial commutation lump sum death benefit)(a), the fire and rescue authority may, subject to the provisions of this rule and rule E7, commute the whole or any part of the allowance for a lump sum.

(2) The allowance may not be commuted unless—

- (a) the fire and rescue authority are satisfied that there are sufficient reasons, and
- (b) a surviving parent or the child’s guardian or, if he has neither, the child himself consents, and
- (c) the deceased died before his 75th birthday.

(3) The payment of a lump sum on the commutation of the whole or any part of an allowance under this rule must be made before the date on which the deceased would have attained the age of 75.

(3) A lump sum under this rule shall be calculated in accordance with Part III of Schedule 5.”.

9. In rule F6A (previous service reckonable following actionable loss), in paragraph (7)—

- (a) at the end of sub-paragraph (b), insert “and”; and
- (b) omit sub-paragraph (c).

10. In Schedule 1 (interpretation)—

- (a) in the second column of the entry for the defined expression “personal pension scheme”, for “in section 84(1) of the Social Security Act 1986”, substitute “by section 1 of the 1993 Act”;
- (b) omit the definitions of the expressions “Retained member” and “Volunteer member of the fire and rescue service”; and
- (c) after the definition of “Relevant service in the armed forces”, insert—

“

“Retained firefighter” and “volunteer firefighter”	A person employed by an authority— (a) as a firefighter, but not as a regular firefighter, (b) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting), (c) otherwise than in a temporary capacity, and (d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that he receives.”
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(a) As to the lump sum rule, *see* section 166 of the Finance Act 2004.

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 amendments have effect from 6th April 2006. The power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

Most of the amendments are for consistency with the new pension scheme for firefighters employed by fire and rescue authorities in Scotland, introduced with effect from 6th April 2006 by S.S.I. 2006/XXXX.

The opportunity has been taken to update the definition of the expression "personal pension Scheme" in Schedule 1 to the Pension Scheme. In consequence, paragraph (7)(c) of rule F6A has been omitted. The expressions "retained member" and "volunteer member of the fire and rescue service" have been replaced with the expressions "retained firefighter" and "volunteer firefighter", which are defined in the same terms.

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.