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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**PENSIONS**

**The Firefighters’ Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2009**

*Made* - - - - [ ] February 2009

*Laid before the Scottish Parliament* [13th] February 2009

*Coming into force* - - [6th] April 2009

The Scottish Ministers make the following Order 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 all other powers enabling them to do so.

**Citation, commencement, effect and extent**

1.—(1) This Order may be cited as the Firefighters’ Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2009.

(2) This Order comes into force on [6th] April 2009 and, subject to paragraph (3), has effect from that date(c).

(3) Paragraph 2 of the Schedule, in so far as required to give effect to paragraph 3 of the Schedule, and paragraph 3 of the Schedule have effect from [ ] April 1979 to [5th April 2009].

(4) This Order extends to Scotland only.

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(a) 1947 c.41 (“the 1947 Act”); repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21).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 the Firefighters’ Pension Scheme (England and Scotland) Order 2004 (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 (S.I. 2006/304).

(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 1947. 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.

(c) Retrospective effect is permitted by section 12 of the Superannuation Act 1972 as applied by section 16 of that Act.

**Amendment of the Firefighters' Pension Scheme Order 1992**

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

St Andrew's House,  
Edinburgh  
February 2009

A member of the Scottish Executive

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(a) S.I. 1992/129; amended by S.I. 1997/2309 and 2851, 1998/1010, 2001/3649 and 2005/3228 and S.S.I. 2001/310, 2004/385, 2005/566, 2006/342, 2007/200 and 2008/161. The Firemen's Pension 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 Scheme and subsections (1) to (5) of section 26 were continued in force by 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.

## SCHEDULE

Article 2

### Amendment of Schedule 2 to the Firefighters' Pension Scheme Order 1992

**1.**—(1) Rule E8 (increase of pensions and allowances during first 13 weeks) is amended as follows.

(2) For paragraph (3)(b) substitute—

“(b) where paragraph (1)(b) applies—

- (i) the weekly amount of the deceased's pension together with any increase in it under the Pensions (Increase) Act 1971; and
- (ii) the weekly amount of any Increased Pension Entitlement, if applicable.”.

**2.** After rule N19(application of rules of this Scheme to pension credit members etc), insert—

### “PART P

#### INCREASED PENSION ENTITLEMENT

##### Interpretation

**P1.**—(1) In this Part—

“the existing Orders” means the Pensions Increase (Annual Review) Order 1978(a), the Pensions Increase (Review) Order 1979(b) the Pensions Increase (Review) Order 1980(c), the Pensions Increase (Review) Order 1981(d), the Pensions Increase (Review) Order 1982(e), the Pensions Increase (Review) Order 1983(f), the Pensions Increase (Review) Order 1984(g), the Pensions Increase (Review) Order 1985(h), the Pensions Increase (Review) Order 1986(i), the Pensions Increase (Review) Order 1987(j), the Pensions Increase (Review) Order 1988(k), the Pensions Increase (Review) Order 1989(l), the Pensions Increase (Review) Order 1990(m), the Pensions Increase (Review) Order 1991(n), the Pensions Increase (Review) Order 1992(o), the Pensions Increase (Review) Order 1993(p), the Pensions Increase (Review) Order 1994(q), the Pensions Increase (Review) Order 1995(r), the Pensions Increase (Review) Order 1996(s), the Pensions Increase (Review) Order 1997(t), the Pensions Increase (Review)

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(a) S.I. 1978/1211.  
(b) S.I. 1979/1047.  
(c) S.I. 1980/1302.  
(d) S.I. 1981/1217.  
(e) S.I. 1982/1178.  
(f) S.I. 1983/1264.  
(g) S.I. 1984/1307.  
(h) S.I. 1985/1575.  
(i) S.I. 1986/1116.  
(j) S.I. 1987/130.  
(k) S.I. 1988/217.  
(l) S.I. 1989/477.  
(m) S.I. 1990/483.  
(n) S.I. 1991/684.  
(o) S.I. 1992/198.  
(p) S.I. 1993/779.  
(q) S.I. 1994/776.  
(r) S.I. 1995/708.  
(s) S.I. 1996/800.  
(t) S.I. 1997/634.

Order 1998(a), the Pensions Increase (Review) Order 1999(b), the Pensions Increase (Review) Order 2000(c), the Pensions Increase (Review) Order 2001(d), the Pensions Increase (Review) Order 2002(e), [the Pensions Increase (Review) Order 2003(f), the Pensions Increase (Review) Order 2004(g)], the Pensions Increase (Review) Order 2005(h), the Pensions Increase (Review) Order 2006(i), the Pensions Increase (Review) Order 2007(j) and the Pensions Increase (Review) Order 2008(k); and “existing Order” shall be construed accordingly;

[“fire and rescue authority” means a fire and rescue authority under the Fire (Scotland) Act 2005(l)];

“guaranteed minimum pension” has the same meaning as it does for the purposes of the Social Security Act 1975(m);

“pension authority” has the same meaning as given by section 7(1) of the 1971 Act;

“relevant fire and rescue authority” means the authority responsible for payment of the person’s pension as determined by rule L1 (authorities responsible for payment of awards) of the Scheme; and

“tax year” means a period of 12 months beginning on 6th April and ending on the following 5th April.

### Application of Part P

**P2.** This Part applies to a person who–

- (a) is entitled to a pension under this Scheme on [5th] April 2009;
- (b) is entitled to a guaranteed minimum pension(n) on that date; and
- (c) has in any tax year since entitlement to the guaranteed minimum pension commenced received either or both of the payments described in rule P3(1) (“GMP-related payments”).

### Payments

**P3.—**(1) The payments are–

- (a) the payment of an increase in the annual rate of the pension which is equal to the increase in the annual rate of that part of the guaranteed minimum pension attributable to [reckonable service accrued during] the tax years 1978-79 to 1987-88;
- (b) the payment of an increase in the annual rate of the pension which is equal to the increase in the annual rate of that part of the guaranteed minimum pension attributable to [earnings factors for]/[reckonable service accrued during] the tax years 1988-89 to 1996-97, [where that annual increase was above 3%], that meet the conditions in paragraph (2).

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(a) S.I. 1998/503.

(b) S.I. 1999/522.

(c) S.I. 2000/672.

(d) S.I. 2001/664.

(e) S.I. 2002/669.

(f) S.I. 2003/681.

(g) S.I. 2004/758.

(h) S.I. 2005/858.

(i) S.I. 2006/741.

(j) S.I. 2007/801.

(k) S.I. 2008/711.

(l) 2005 asp 5; see section 1 of that Act.

(m) 1975 c.60.

(n) By virtue of section 17 of the Pension Schemes Act 1993 (c.48) [and of regulation [x] of the Scheme], the widow, widower or surviving partner of a [pensioner member] is entitled to a guaranteed minimum pension under the Scheme.

- (2) The conditions are that the payments are made–
- (a) by the relevant fire and rescue authority~~(a)~~;
  - (b) [applying the existing Orders as if the person was not entitled to a guaranteed minimum pension]; and
  - (c) between [xth] April 1979 and [7th April 2009].

(3) In this rule, a reference to “the increase in the annual rate” means, in relation to any tax year, the rate of increase provided for in the existing Order relevant to that tax year~~(b)~~.”.

**3. After rule P3 (payments) insert–**

**“Authorisation of payment of GMP-related payments**

**P4.**—(1) The relevant fire and rescue authority may pay GMP-related payments to–

- (a) a person to whom this Part applies;
- (b) a deceased entitlement member.

(2) Where a relevant fire and rescue authority has paid GMP-related payments, the authority may not recover those payments.

(3) In this rule, a deceased entitled member is a person who–

- (a) at the date of his death was entitled to a pension under this Scheme;
- (b) at that date was entitled to a graduated minimum pension; and
- (c) has [in any tax year] since entitlement to the guaranteed minimum pension commenced receiving either or both of the payments described in rule P3(1).”.

**4. After rule P4 (authorisation of payment of GMP-related payments) insert–**

**“Increased Pension Entitlement**

**P5.**—(1) Subject to paragraphs (4) and (5), a person to whom this Part applies is entitled to an Increased Pension Entitlement calculated in accordance with paragraph (3).

(2) Increased Pension Entitlement is payable by the relevant fire and rescue authority.

(3) The annual amount of the Increased Pension Entitlement that the person is entitled to is equal to the GMP-related payment that the person received for the tax year 2008-09.

(3A) [The annual amount of the Increased Pension Entitlement that the person is entitled to is equal to the annual amount of the GMP-related payment [for the tax year 2009-10]].

(3B) [In this regulation, the [annual amount of the] GMP-related payment for the tax year 2009-10 is the amount of GMP-related payment [, within the meaning of rule P3(1),] that the person would have received in the tax year 2009-10 if the relevant fire and rescue authority had, in relation to that complete tax year, applied the existing Orders and the Pensions Increase (Review) Order 2009(c) as if the person was not entitled to a guaranteed minimum pension.

(4) Where the person’s entitlement to a pension ceases under this Scheme, the person is not entitled to receive any payment of an amount of the Increased Pension Entitlement in respect of any period after the date on which the entitlement to that pension ceases.

(5) Where the pension, or any proportion of the person’s pension is forfeited under this Scheme, either permanently or temporarily, the same proportion of the Increased Pension Entitlement is forfeited for the same period.

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(a) [Could footnote responsibilities/flow of money. Could also go into explanatory notes].

(b) For any given tax year, the annual rate of increase provided for by the relevant existing Order is identical to the annual rate of increase provided for by the relevant existing GMP Order.

(c) [ . . . ]

(6) An Increased Pension Entitlement is payable for life and shall be discharged by payments in advance at such reasonable intervals as the relevant fire and rescue authority may, in their discretion, determine except that payment on account of an Increased Pension Entitlement may be delayed, in whole or in part, pending the determination of any question as to the liability of the relevant fire and rescue authority in respect thereof, including any question as to the continuance of that liability.

(7) The Increased Pension Entitlement or any proportion of it may not be commuted for a lump sum.”.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*