

2010 No. 333

FIRE SERVICES

PENSIONS

**The Firefighters' Pension Scheme (Scotland) Order 2007
Amendment (No. 2) Order 2010**

Made - - - - *16th September 2010*
Laid before the Scottish Parliament *21st September 2010*
Coming into force - - *31st October 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 34(2)(e), (f), (h) and (m), (3) and (4) and 60(2) of the Fire and Rescue Services Act 2004(a) and all other powers enabling them to do so.

In accordance with section 34(5) of that Act they have consulted with such persons as they considered appropriate.

Citation, commencement, effect and extent

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (Scotland) Order 2007 Amendment (No. 2) Order 2010.

(2) This Order comes into force on 31st October 2010, and has effect from 1st April 2010(b).

(3) This Order extends to Scotland only.

Amendment of the Firefighters' Pension Scheme (Scotland) Order 2007

2. Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007(c) is amended in accordance with the Schedule to this Order.

JOHN SWINNEY

A member of the Scottish Executive

St Andrew's House,
Edinburgh
16th September 2010

(a) 2004 c.21; amended by s.89(1) of, and paragraph 24 of schedule 3 to, the Fire (Scotland) Act 2005 (asp 5). 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 2005 (S.I. 2005/849).
(b) Retrospective effect is permitted by section 34(3) of the Fire and Rescue Services Act 2004.
(c) S.S.I. 2007/199; amended by S.S.I. 2008/160 and 2010/65.

SCHEDULE

Article 2

AMENDMENT OF SCHEDULE 1 TO THE FIREFIGHTERS’ PENSION SCHEME (SCOTLAND) ORDER 2007

1. In Part 1 (citation and interpretation) in rule 2 (interpretation)—
 - (a) after the definition of “final pensionable pay”, insert—
 - (i) ““financial year” means the period of twelve months ending on 31st March;” and
 - (ii) ““fire and rescue authority employer contributions” has the meaning given by rule 3(1) of Part 13B;”;
 - (b) after the definition of “firefighter member”, insert—
 - (i) ““Firefighters’ Operating Account” in relation to each authority, means the general account kept and maintained by the authority by virtue of section 93 and, as the case may be, section 106 of the Local Government (Scotland) Act 1973(a);” and
 - (ii) ““Firefighters’ Pension Account” in relation to each authority, means the pension account to be established by that authority in accordance with Part 13B rule 1(1);”;
 - (c) after the definition of “personal pension scheme”, insert—

““proper accounting practices” has the meaning given by section 12, as read with section 14, of the Local Government in Scotland Act 2003(b);”.
2. In Part 10 (qualifying service and pensionable service), in rule 4 (reckoning of unpaid period of absence)—
 - (a) in paragraph (1), for the words “if a notional funding system applied” substitute “in accordance with Part 13B”; and
 - (b) in paragraph (3), for the words “treat as paid” substitute “pay”.
3. In Part 12 (transfers into and out of the scheme) in rule 12 (transfer of payments and pension history between fire authorities)—
 - (a) in paragraph (1)—
 - (i) after “Chapter 2” insert “, where applicable under paragraph (1A),”; and
 - (ii) omit “in addition to providing a cash transfer value calculated under Chapter 2 of this Part”.
 - (b) after paragraph (1) insert—

“(1A) Where the new authority is—

 - (a) a fire and rescue authority in England;
 - (b) a fire and rescue authority in Wales; or
 - (c) the Northern Ireland Fire and Rescue Service,

the former authority must provide a cash transfer value calculated under Chapter 2 of this Part.”.
 - (c) In paragraph (5)—
 - (i) for “section 50” substitute “sections 50, 50A and 50B”; and

(a) 1973 c.65. Section 93 of the Local Government (Scotland) Act 1973 was amended by Schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39) and section 41 of the Local Government in Scotland Act 2003 (asp 1); section 106 of that Act of 1973 was amended by Schedule 14 of that Act of 1994 and Schedule 1 of the Transport (Scotland) Act 2005 (asp 12).

(b) 2003 asp 1.

- (ii) omit “and the Occupational Pension Scheme (Internal Dispute Resolution Procedures) Regulations 1996”.

4. After Part 13A (direct payments by the Scottish Ministers)(a), insert the following Part—

“PART 13B FIREFIGHTERS PENSION ACCOUNT

Establishment, maintenance and operation of a Firefighters’ Pension Account

1.—(1) Every authority must establish a separate account for firefighters’ pensions (to be known as the Firefighters’ Pension Account).

(2) A Firefighters’ Pension Account must be established for the financial year ending on 31st March 2011 and maintained for each subsequent financial year.

(3) Every authority must keep accounts in respect of all payments into or out of its Firefighters’ Pension Account.

(4) Such accounts must be maintained in accordance with proper accounting practices.

(5) Except as may otherwise be provided—

- (a) any sum paid or repaid to an authority under the provisions of this Order shall be receivable into the authority’s Firefighters’ Pension Account; and
- (b) any sum paid or repaid by an authority under the provisions of this Order shall be payable out of the authority’s Firefighters’ Pension Account.

Particular payments into and out of the Firefighters’ Pension Account

2.—(1) Without prejudice to the generality of rule 1(5), the following payments which are receivable by an authority are to be paid into the authority’s Firefighters’ Pension Account—

- (a) pension contributions receivable from a firefighter under Part 11, rules 3 and 4;
- (b) sums receivable from firefighters under Part 10, rule 4;
- (c) sums receivable from firefighters under Part 11, rule 5;
- (d) transfer values receivable from firefighters under Part 12, rule 14; and
- (e) transfer values receivable under Part 12, chapters 3 and 4.

(2) Without prejudice to the generality of rule 1(5), the following payments which are payable by an authority are to be paid out of the authority’s Firefighters’ Pension Account—

- (a) awards payable under Parts 3, 4, 5, 6, 7 and 14;
- (b) any refunds made under Part 3, rule 8;
- (c) transfer values payable under Part 12.

Fire and rescue authority contributions

3.—(1) In each financial year an authority must transfer from the Firefighters’ Operating Account into the Firefighters’ Pension Account contributions (“fire and rescue authority employer contributions”) at the rate of 11.5% of the pensionable pay of a firefighter in respect of any period during which pension contributions are paid by the firefighter under Part 11, rule 3 (pension contributions) or are treated as being so paid.

(a) Part 13A was inserted by S.S.I. 2010/65.

(2) For the purposes of paragraph (1), the periods during which pension contributions are treated as being paid by a firefighter are—

- (a) any period reckonable as pensionable service in accordance with Part 10, rule 4 (reckoning of unpaid period of absence); and
- (b) any period reckonable as pensionable service in accordance with Part 10, rule 5 (reckoning of maternity, paternity and adoption leave, etc).

(3) Subject to paragraph (4), in this rule, “pensionable pay” has the meaning assigned to it by Part 11, rule 1 (pensionable pay).

(4) Where the amount of a firefighter’s pensionable pay in respect of a period is reduced due to one of the circumstances mentioned in paragraph (5), that firefighter must be treated for the purposes of this rule as if that firefighter’s pensionable pay were not so reduced.

(5) The circumstances mentioned in this paragraph are that the firefighter has taken a period of sick leave, maternity leave, paternity leave, adoption leave or any other period of leave which was paid at a reduced rate.

(6) Where an authority repays the pension contributions of a firefighter under Part 3, rule 8, the authority must also transfer from its Firefighters’ Pension Account into its Firefighters’ Operating Account an amount equal to the aggregate of the authority employer contributions it has transferred in accordance with paragraph (1) in respect of such a firefighter.

(7) Where a firefighter retires with an entitlement to an ill-health pension under Part 3, rule 2 before attaining the normal retirement age in accordance with the provisions of Part 2, rule 3, the authority shall transfer from its Firefighters’ Operating Account into the Firefighters’ Pension Account an amount calculated in accordance with paragraph (8).

(8) The amount referred to in paragraph (7) is—

- (a) in the case of a lower tier award made under Part 3, rule 2(2), an amount equal to twice the final pensionable pay for the firefighter concerned; and
- (b) in the case of a higher tier award made under Part 3, rule 2(3), an amount equal to four times the final pensionable pay for the firefighter concerned.

(9) Where an authority continues to pay a pension in whole or in part in a case where they have a discretion to withdraw the whole or any part of that pension under Part 9, rule 3, the authority must in a financial year transfer from the Firefighters’ Operating Account into the Firefighters’ Pension Account an amount equal to the amount of pension paid during that financial year to that firefighter.

(10) Where an authority pays contributions under Part 10, rule 4(3), the authority must in a financial year transfer from the Firefighters’ Operating Account into the Firefighters’ Pension Account an amount equal to those contributions.

Awards under the Firefighters’ Compensation Scheme (Scotland) Order 2006

4.—(1) Subject to paragraphs (2) to (9), awards payable by an authority under the Compensation Scheme^(a) must be paid out of the authority’s Firefighters’ Operating Account.

(2) This paragraph applies where a person described in paragraph (3) would be entitled to receive, in respect of any particular period, payments on account of—

- (a) an award under the provisions of the Compensation Scheme mentioned in paragraph (4); and
- (b) an award under this Order,

but for the prevention of duplication provisions.

(a) “Compensation Scheme” is defined in Part 1, rule 2 of Schedule 1 to S.S.I. 2007/199.

- (3) The person referred to in paragraph (2) is either—
- (a) a firefighter; or
 - (b) in circumstances where a firefighter has died, the spouse, civil partner, child or dependent of that firefighter.
- (4) The provisions of the Compensation Scheme mentioned in this paragraph are—
- (a) Part 3, rule 1 (special award for spouse or civil partner);
 - (b) Part 3, rule 2 (augmented award for spouse or civil partner);
 - (c) Part 4, rule 1 (child’s special allowance);
 - (d) Part 5, rule 1 (adult dependent relative’s special pension);
 - (e) Part 8, rule 1 (award for or in relation to employee who is not a regular or retained firefighter);
 - (e) Part 8, rule 2 (award for or in relation to a retained or volunteer firefighter).
- (5) Where paragraph (2) applies—
- (a) the award payable to such a person under this Order shall be payable by an authority out of its Firefighters’ Pension Account; and
 - (b) the award payable to such a person under the Compensation Scheme shall be payable by an authority in part out of the Firefighters’ Pension Account and in part out of the Firefighters’ Operating Account, in accordance with paragraphs (6) and (7).
- (6) The part of the award which is equal to the award to which such person would be entitled under this Order, but for the prevention of duplication provisions, shall be payable by the authority out of the Firefighters’ Pension Account.
- (7) The remainder of the award shall be payable by the authority out of the Firefighters’ Operating Account.
- (8) This rule is without prejudice to the operation of the prevention of duplication provisions.
- (9) In this rule “the prevention of duplication provisions” means Part 10, rules 3, 4 and 5 of the Compensation Scheme.

Transfers between the Firefighters’ Pension Account and the Firefighters’ Operating Account

5.—(1) Where, in respect of any financial year, the amount shown in the accounts of the Firefighters’ Pension Account as expended (including transfers payable) exceeds the amount shown in those accounts as receivable (including transfers receivable), the authority must transfer from its Firefighters’ Operating Account to its Firefighters’ Pension Account an amount equal to the difference between those amounts.

(2) Where, in respect of any financial year, the amount shown in the accounts for the Firefighters’ Pension Account as receivable (including transfers receivable) exceeds the amount shown in those accounts as expended (including transfers payable), the authority must transfer from its Firefighters’ Pension Account into its Firefighters’ Operating Account an amount equal to the difference between those amounts.

(3) For the purposes of this rule, no account shall be taken of payments made by the Scottish Ministers or the fire and rescue authority under rule 6 below.

Effect of transfers between the Firefighters' Pension Account and the Firefighters' Operating Account

6.—(1) Where—

- (a) an authority's audited accounts for the previous financial year show that the authority has transferred an amount into the Firefighters' Pension Account under rule 5(1); or
- (b) on the basis of information provided to the Scottish Ministers under rule 7, they are of the opinion that an authority is likely to make a transfer of an amount into its Firefighters' Pension Account in respect of any financial year under rule 5(1),

the Scottish Ministers must take that amount into account when deciding on future funding for pensions for that authority and may pay to the authority a sum not exceeding that amount out of moneys provided by Parliament.

(2) Where—

- (a) an authority's audited accounts show that the authority has transferred an amount into its Firefighters' Operating Account under rule 5(2); or
- (b) on the basis of information provided to the Scottish Ministers under rule 7, they are of the opinion that an authority is likely to make a transfer of an amount into its Firefighters' Operating Account in respect of any financial year under rule 5(2),

the Scottish Ministers must take that amount into account when deciding on future funding for pensions for that authority and may require the authority to pay a sum not exceeding that amount into the Scottish Consolidated Fund.

Provision of information

7.—(1) The Scottish Ministers may by written notice to an authority require the authority to prepare and send to them such information, accounts and reports—

- (a) in respect of the authority's Firefighters' Pension Account; or
- (b) relevant to the exercise of the Scottish Ministers functions under rule 6,

as they may specify.

(2) Such notice may specify the form of the information, accounts and reports and the times at which the authority must send them to the Scottish Ministers.

(3) Without prejudice to the generality of paragraph (1), the Scottish Ministers may require the authority to provide—

- (a) estimates of the expenditure and income of that authority's Firefighters' Pension Account; and
- (b) accounts (whether audited or unaudited) relating to that authority's Firefighters' Pension Account.

(4) An authority must respond to a notice under paragraph (1) within such a period as the Scottish Ministers may specify in that notice, or within such longer period as they may in any particular case allow.

Further sums payable out of the Firefighters' Operating Account

8.—(1) Any charge, interest or penalty payable by an authority in connection with this Order shall be payable out of the Firefighters' Operating Account.

(2) Any administrative cost arising from administering pension arrangements under this Order, the Compensation Scheme Order and any other previous Orders making provisions for firefighters pensions shall be payable out of the Firefighters' Operating Account.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension Scheme (Scotland) Order 2007 ("the 2007 Order") and has effect from 1st April 2010.

The Order introduces provisions supporting the introduction of a new funding system for firefighter pensions. It does so by amending Schedule 1 to the 2007 Order which sets out the New Firefighters' Pension Scheme (Scotland) ("the New Scheme").

Paragraph 1 of the Schedule to this Order inserts definitions of terms used in consequence of amendments made elsewhere in the Order. Paragraph 2 makes consequential changes to rule 4 of Part 10 of the New Scheme which recognises that an employer's contribution will be due when reckoning periods of unpaid absence. Paragraph 3 makes provision for transfers between Fire and Rescue Authorities.

Paragraph 4 of the Schedule to the Order inserts Part 13B into the New Scheme. Part 13B makes provision for—

- the establishment and maintenance of a Firefighters' Pension Account and the payments that are to flow into and out of that Account (rules 1 to 3 of Part 13B);
- the treatment of awards made under the Compensation Scheme for firefighters in terms of the accounts from which such awards are to be made (rule 4 of Part 13B);
- transfers between a fire and rescue authority's Firefighters' Pension Account and Firefighters' Operating Account and the effect of those transfers (rules 5 and 6 of Part 13B); and
- a requirement for fire and rescue authorities to provide information etc. in relation to the Firefighters' Pension Account to the Scottish Ministers (rule 7 of Part 13B).

A full impact assessment has not been produced for this Order, as no impact on the private or voluntary sectors is foreseen.

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