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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 338**

**FIRE SERVICES  
PENSIONS**

**The Firefighters' Compensation Scheme (Scotland) Order 2006**

<i>Made</i>	- - - -	<i>8th June 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>9th June 2006</i>
<i>Coming into force</i>	- -	<i>1st July 2006</i>

The Scottish Ministers, in exercise of the powers conferred by section 34(1) to (5) and (8) and 60(2) of the Fire and Rescue Services Act 2004(1), after consulting such persons as they considered appropriate in accordance with section 34(5) of that Act, hereby make the following Order:

**Citation, commencement, application, extent and interpretation**

1.—(1) This Order may be cited as the Firefighters' Compensation Scheme (Scotland) Order 2006 and shall come into force on 1st July 2006; but—

- (a) rule 3 of Part 2 of the Compensation Scheme (compensation for death or permanent incapacity while on duty), and so much of that Scheme as relates to that rule, shall have effect from 1st April 2000; and
- (b) the remainder of the Compensation Scheme shall have effect from 6th April 2006.

(2) This Order extends to Scotland only.

(3) In this Order—

“the Compensation Scheme” means the Firefighters' Compensation Scheme (Scotland), set out in Schedule 1 to this Order; and

“the Pension Scheme” means the Scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992(2).

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(1) [2004 c. 21](#). The functions of the Secretary of State in respect of section 34(1) to (5) and (8) and 60(2) 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](#).

(2) [S.I. 1992/129](#), amended, by [S.I. 1997/2309](#) and [2851, 1998/1010](#) and [2005/3228](#) (Schedule 1) and [S.S.I. 2001/310, 2004/385, 2005/566](#) and [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 That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21). 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 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 that Order. The functions of the Secretary of State as regards to Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers

### **New compensation scheme for firefighters**

2.—(1) Subject to articles 3 and 4, the Compensation Scheme (which makes provision for the payment of pensions, allowances and gratuities to and in respect of persons who die or are permanently disabled as the result of an injury sustained or disease contracted while employed by a fire and rescue authority) shall have effect; and the corresponding provisions of the Pension Scheme shall cease to have effect.

(2) The corresponding provisions of the Pension Scheme and the provisions of the Compensation Scheme to which they correspond are set out in Schedule 2 to this Order.

### **General transitional provision**

3.—(1) Where—

- (a) a provision of the Compensation Scheme (“the new provision”) re-enacts a provision of the Pension Scheme (“the old provision”) with any modification; and
- (b) a person to whom a protected benefit was being paid or might become payable is placed in a worse position than the person would have been in if the old provision had continued to have effect,

he or she may, by giving written notice to the fire and rescue authority liable or prospectively liable for payment of the benefit, elect that the new provision is to apply in relation to the benefit as if the old provision had been re-enacted without modification.

(2) Notice under paragraph (1) must be given not later than 30th September 2006.

(3) For the purposes of paragraph (1), a protected benefit is one paid, or capable of becoming payable, to or in respect of a person who, before 6th April 2006, ceased to be a member of the fire and rescue service or died.

### **Transitional provision: decisions and determinations made before 1st April 2006**

4.—(1) With the exception of rule 3 of Part 2, the Compensation Scheme shall not have effect in relation to a person in respect of whom a determination or decision under the Pension Scheme relevant to whether permanent disablement has been occasioned by a qualifying injury (within the meaning of rule A9 of the Pension Scheme) has been made before 6th April 2006.

(2) In a case to which paragraph (1) applies, the provisions of the Pension Scheme, in the form in which they exist immediately before 6th April 2006, shall continue to have effect in relation to such a person.

St Andrew’s House,  
Edinburgh  
8th June 2006

*GEORGE LYON*  
Authorised to sign by Scottish Ministers

## SCHEDULE 1

Article 2

### The Firefighters' Compensation Scheme (Scotland) 2006

#### “PART 1

#### GENERAL PROVISIONS

##### **Citation and commencement**

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

(2) With the exception of rule 3 of Part 2 (compensation for death or permanent incapacity while on duty), the provisions of this Scheme have effect from 6th April 2006.

(3) Rule 3 of Part 2 has effect from 1st April 2000.

##### **Interpretation**

2.—(1) In this Scheme—

“the 2004 Act” means the Fire and Rescue Services Act 2004<sup>(3)</sup>;

“the 2005 Act” means the Fire (Scotland) Act 2005;

“amount”, in relation to a pension or allowance, means its annual amount;

“average pensionable pay” has the same meaning as in the Pension Scheme<sup>(4)</sup>;

“award” means a pension, allowance or gratuity under this Scheme;

“child”, in relation to a person who has died, means—

(a) a legitimate or illegitimate child, step-child or adopted child of that person; and

(b) any other child who was substantially dependent on that person and either is related to that person or is the child of that person’s spouse or civil partner;

and “parent” shall be construed accordingly;

“disabled”, “disablement” and “permanent disablement” shall be construed in accordance with rule 8 of Part 1;

“fire and rescue authority” means a fire and rescue authority under the Fire (Scotland) Act 2005<sup>(5)</sup>;

“full-time vocational training” means training of at least one year’s duration for a trade, profession or calling where that training is undertaken on a full-time basis;

“independent qualified medical practitioner” means a medical practitioner holding a diploma in occupational medicine or an equivalent or higher qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine<sup>(6)</sup> or an equivalent institution of an EEA State; and for the purposes of this definition “a competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003<sup>(7)</sup>;

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(3) 2004 c. 21.

(4) See rule G1.

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

(6) The Faculty of Occupational Medicine is a registered charity no. 1035415.

(7) S.I. 2003/1250, as amended by S.I. 2005/2120.

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“injury” includes disease;

“normal pension age”, in relation to employees of a fire and rescue authority appointed on terms under which they are or may be required to engage in fire-fighting, means 55;

“pension”, unless otherwise stated, means a pension under this Scheme;

“Pension Scheme” means the Firemen’s Pension Scheme 1992<sup>(8)</sup>;

“pensionable pay” and “pensionable service” have the same meaning as in the Pension Scheme<sup>(9)</sup>;

“qualifying injury” shall be construed in accordance with rule 7 of Part 1;

“regular firefighter” means a person who is employed—

- (a) by a fire and rescue authority as a firefighter (whether whole-time or part-time), other than as a retained or volunteer firefighter; and
- (b) on terms under which that person 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 that person’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting) and whose employment is not temporary;

“retained firefighter” means a member of the fire and rescue service who is obliged to attend—

- (a) at the station to which he or she is attached for training, development and maintenance duties for an average of two hours each week and, promptly, at any time, in response to a call; and
- (b) at any incident or other occurrence, or at any other station for standby duties during his or her period of availability;

“retire” shall be construed in accordance with rule 10 of Part 1;

“state pensionable age” means pensionable age as determined in accordance with the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995<sup>(10)</sup>;

“surviving spouse” means a widow or widower; and

“volunteer firefighter” means a member of the fire and rescue service who—

- (a) is obliged to attend at the station to which he or she is attached for training, development and maintenance duties for an average of two hours each week and, promptly, at any time, in response to a call; and
- (b) receives no retaining or other fee in respect of those duties.

(2) Where this Scheme requires anything to be done within a specified period after or from a specified day or event, the period begins immediately after the specified day or, as the case may be, the day on which the specified event occurs.

### **Exclusive application to regular firefighters**

**3.—(1)** Subject to paragraph (3) and Part 8 (special cases), this Scheme applies in relation to regular firefighters and their spouses or civil partners and dependants to the exclusion of pension provision under any enactment other than section 34 of the 2004 Act and the Social Security Act 1975<sup>(11)</sup>.

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<sup>(8)</sup> Set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992 (S.I. 1992/129).

<sup>(9)</sup> See, as to “pensionable pay”, rule G1 and, as to “pensionable service”, rule F1.

<sup>(10)</sup> 1995 c. 26.

<sup>(11)</sup> 1975 c. 44.

(2) In paragraph (1) “pension provision” means any provision for the payment of an award, on death or permanent disablement, in respect of employment as a regular firefighter.

(3) A person who is not an employee of a fire and rescue authority but whose employment is, under rule 4 or 5 of this Part, treated for the purposes of this Scheme as employment as a regular firefighter, is not a regular firefighter for the purposes of this rule.

#### **Application to temporary employment connected with fire services**

4.—(1) This rule applies in the case of a person who has ceased to perform duties as a regular firefighter and has entered temporary employment.

(2) For the purposes of this rule temporary employment is employment, on duties connected with the provision of fire and rescue services—

- (a) as an instructor at the central training institution or any training centre maintained by the Scottish Ministers;
- (b) as an inspector, assistant inspector or other officer appointed under section 43 of the 2005 Act;
- (c) in pursuance of arrangements made by the Scottish Ministers in connection with the training in fire-fighting of members of the armed forces of the Crown; or
- (d) in pursuance of arrangements made by the Scottish Ministers, in connection with the training and organisation of fire-fighting forces in any country or territory outside the United Kingdom.

(3) Where this rule applies the person’s temporary employment shall be treated for the purposes of this Scheme as employment by a fire and rescue authority; and this Scheme applies in relation to the temporary employment as if—

- (a) that person were, and that person’s duties were duties as, a regular firefighter;
- (b) that person’s pay and role were the same as they would have been had that person not ceased to perform duties as a regular firefighter or, where section 10 of the Fire Services Act 1959(12) applies, the same as that person’s pay and role as an employee of a fire and rescue authority;
- (c) any reference to employment with a fire and rescue authority were a reference to the temporary employment; and
- (d) any reference to a fire and rescue authority were a reference to the Scottish Ministers.

#### **Application to permanent employment as instructor**

5.—(1) This rule applies in the case of a person who has ceased to perform duties as a regular firefighter and has entered permanent employment.

(2) For the purposes of this rule permanent employment is employment, on duties connected with the provision of fire and rescue services, as an instructor at the central training institution or any training centre maintained by the Scottish Ministers.

(3) Where this rule applies the person’s permanent employment shall be treated for the purposes of this Scheme as employment by a fire and rescue authority and this Scheme applies in relation to the permanent employment as if—

- (a) that person were, and that person’s duties were duties as, a regular firefighter; and
- (b) any reference to a fire and rescue authority were a reference to the Scottish Ministers.

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(12) 1959 c. 44.

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### **Reckoning of service for purposes of awards**

6.—(1) Subject to paragraph (3), for the purpose of calculating an award payable to or in respect of an employee of a fire and rescue authority by reference to any period in years (including a period of pensionable or other service) the period shall be reckoned as—

$$A + (B \div 365) \text{ years}$$

where—

A is the number of completed years in the period; and

B is the number of completed days in any remaining part of a year,

and a part of a year which includes 29th February in a leap year and comprises 365 days shall be treated as a whole year.

(2) Where, for the purpose of calculating an award payable to or in respect of a regular firefighter—

(a) it is necessary to determine the regular firefighter's pensionable service reckonable by reason of service or employment before or after a particular date ("the material date"); and

(b) by virtue of the receipt by a fire and rescue authority of a transfer value, the regular firefighter is entitled to reckon a period of pensionable service ("the credited period") by reason of service or employment for a period ("the previous employment period") which includes that date,

the credited period counts as pensionable service reckonable by reason of service or employment before and after the material date in the same proportion as that between the parts of the previous employment period falling before and after the material date.

(3) Subject to rule 2 of Part 8 (special cases: award for or in relation to a retained or volunteer firefighter) and Part 2 of Schedule 2 to Part 3, any period of service as a part-time employee of a fire and rescue authority shall be treated as service as a whole-time employee of a fire and rescue authority when calculating a person's pensionable service.

### **Qualifying injury**

7.—(1) Except in—

(a) rule 3 of Part 2 (compensation for death or permanent incapacity while on duty);

(b) rule 2 of Part 8 (special cases: award for or in relation to a retained or volunteer firefighter);

(c) paragraphs (2) and (3) of rule 1 of Part 10 (authorities responsible for payment of awards); and

(d) rule 3 of Part 10 (prevention of duplication),

references in this Scheme to a qualifying injury are references to an injury received by a person, without that person's own default, in the exercise of that person's duties as a regular firefighter.

(2) In rule 3 of Part 2, references to a qualifying injury are references to an injury received by a person in the exercise of that person's duties as a regular, retained or volunteer firefighter.

(3) In rule 2 of Part 8 and paragraph (4) of rule 3 of Part 10, references to a qualifying injury are references to an injury received by a person, without that person's own default, in the exercise of that person's duties as a retained or volunteer firefighter.

(4) In paragraphs (2) and (3) of rule 1 of Part 10 and paragraph (4) of rule 3 of that Part, references to a qualifying injury are references to an injury received by a person, without that person's own default, in the exercise of that person's duties as a regular or retained firefighter.

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(5) For the purposes of this Scheme an injury shall be treated as having been received by a person without that person's default unless the injury is wholly or mainly due to that person's own serious and culpable negligence or misconduct.

### **Disablement**

8.—(1) References in this Scheme to a person's being permanently disabled are references to that person being disabled at the time when the question arises for decision and to that person's disablement being at that time likely to be permanent.

(2) In determining whether a disablement is permanent, a fire and rescue authority shall have regard to whether the disablement will continue until the person's normal pension age.

(3) Subject to paragraph (4), disablement means incapacity, occasioned by infirmity of mind or body, for the performance of duty, except that, in relation to a child, it means incapacity, so occasioned, to earn a living.

(4) Where it is necessary to determine the degree of a person's disablement, it shall be determined by reference to the degree to which that person's earning capacity has been affected as a result of a qualifying injury.

(5) Where, as a result of a qualifying injury, a person is receiving in-patient treatment at a hospital, that person shall be treated as being totally disabled.

(6) Where—

(a) a person has retired before becoming disabled; and

(b) the date on which the person becomes disabled cannot be ascertained,

it shall be taken to be the date on which the claim that that person is disabled is first made known to the fire and rescue authority.

### **Death or infirmity resulting from qualifying injury**

9.—(1) Except for the purposes of rule 3 of Part 2, a person shall be taken to have died from the effects of a qualifying injury if it appears that, had that person not suffered that injury, that person would not have died when that person did.

(2) Except for the purposes of rule 3 of Part 2, in the case of a person who has died or become permanently disabled, any infirmity of mind or body shall be taken to have been occasioned by an injury if the injury caused or substantially contributed to the infirmity or, as the case may be, the person's death.

### **Effective date of retirement**

10. For the purposes of this Scheme an employee of a fire and rescue authority shall be taken to retire immediately after that employee's last day of service.

## **PART 2**

### **INJURY AWARDS AND DUTY-RELATED COMPENSATION**

#### **Injury awards**

1.—(1) This rule applies to a regular firefighter who has retired and is permanently disabled if the infirmity was occasioned by a qualifying injury.

(2) The firefighter is entitled—

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- (a) to a gratuity; and
  - (b) subject to paragraphs (3) and (4), to an injury pension,
- both calculated in accordance with Schedule 1 to this Part.
- (3) Payment of an injury pension is subject to paragraph 4 of Part 1 of Schedule 1 to this Part.
- (4) Where the firefighter retired before becoming permanently disabled, no payment in respect of an injury pension shall be made for the period before that firefighter became permanently disabled.

### **Part-time members**

2. Where a person is entitled to an award under this Part and some or all of that person's service, by virtue of which that person's pensionable service is reckonable, is part-time service, that person's award shall be calculated in accordance with Part 2 of Schedule 1 to this Part.

### **Compensation for death or permanent incapacity while on duty**

- 3.—(1) This rule applies—
- (a) in relation to a firefighter whose death is caused solely by the effects of a qualifying injury sustained in the performance of the firefighter's duties as a firefighter; and
  - (b) to a firefighter who is permanently incapacitated at the date of discharge for carrying on any occupation solely by reason of a qualifying injury sustained in the performance of the firefighter's duties as a firefighter.
- (2) Subject to paragraphs (4) and (6) to (8), the fire and rescue authority shall pay—
- (a) to the firefighter, or
  - (b) if the firefighter dies within twelve months of the date on which the firefighter sustained the injury that was the cause of the firefighter's death—
    - (i) to the firefighter's dependants, for their joint benefit; or
    - (ii) if the firefighter has only one dependant, to that person,the amount ascertained in accordance with paragraph (3).
- (3) The amount is equal to five times the annual pensionable pay that a person who—
- (a) is employed in the role of firefighter by the same fire and rescue authority; and
  - (b) for pay purposes is competent,
- would receive calculated—
- (i) on the assumption that the firefighter had completed four years' service; and
  - (ii) using the rate of pay applicable at the date on which the injury was sustained.
- (4) If the firefighter dies within the period referred to in paragraph (2)(b) leaving no dependants, the fire and rescue authority shall, subject to paragraphs (6) to (8), pay to the firefighter's executor or personal representative, for the benefit of the firefighter's estate, the sum of £950.
- (5) The recipient of a payment under paragraph (2) or (4)—
- (a) shall notify the fire and rescue authority of the subsequent receipt by the recipient, or where payment is made in the circumstances mentioned in paragraph (2)(b), by any dependant of the deceased, of any payment by way of compensation or damages referable to the qualifying injury (including the receipt of any such payment from the authority); and



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(b) shall, unless that payment been abated by virtue of paragraph (7), pay to the authority such amount as may be notified to the recipient by the authority as the amount to which the authority is entitled under paragraph (7).

(6) Where the firefighter's serious and culpable negligence or misconduct contributed in any material respect to the circumstances in which the firefighter's qualifying injury was sustained, the fire and rescue authority may reduce the amount or sum referred to in paragraph (2) or (4) by such amount as they consider appropriate.

(7) The fire and rescue authority shall abate a payment under paragraph (2) or (4) by the amount of any compensation or damages received as mentioned in paragraph (5)(a).

(8) The fire and rescue authority shall deduct from the amount that would otherwise be payable as mentioned in paragraph (2) or (4) the amount of any gratuity payable under this Scheme or the Pension Scheme, other than the amount of the gratuity that represents the difference between the gratuity payable under rule 1 of Part 3 (special award) and the gratuity payable under rule 2 of that Part (augmented award).

(9) For the purposes of this rule—

(a) a firefighter is competent for pay purposes if—

(i) having been assessed, the firefighter has been found to be competent in the performance of the duties of the firefighter's role; and

(ii) the firefighter is paid at the rate appropriate to competent firefighters performing the same role; and

(b) the dependants of a deceased firefighter are—

(i) any spouse or civil partner who is living with the firefighter at the date of the firefighter's death;

(ii) any spouse or civil partner who is not living with the firefighter at that time but who is wholly or substantially dependent on the firefighter for financial support;

(iii) any unmarried partner (other than a civil partner) who had been living with the firefighter in a long-term relationship (the firefighter's "long-term partner");

(iv) any dependant child who at the date of the firefighter's death—

(aa) is under 16; or

(bb) is under 19 and is undergoing full-time education or full-time vocational training;

(v) any parent of the firefighter who at the date of the firefighter's death is wholly or substantially dependent on the firefighter for financial support; and

(vi) any brother, sister, daughter or son of the firefighter who at the date of the firefighter's death is—

(aa) over the age of 19; and

(bb) wholly or substantially dependent on the firefighter for financial support.

(10) In paragraph (9)(b)(iii), "long-term relationship" means a relationship that has continued, to the exclusion of any other relationship, for the period of at least two years ending with the date of the firefighter's death or such shorter period as the fire and rescue authority may in any particular case allow.

#### **Commutation of small compensatory pensions**

4.—(1) Where the total amount of—

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- (a) any pension under rule 1 payable to a person who has attained state pensionable age;
- (b) any pension to which the person is entitled under rule N2 of the Pension Scheme (pension credit member's entitlement to pension); and
- (c) any increase under the Pensions (Increase) Act 1971<sup>(13)</sup>,

does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule)<sup>(14)</sup>, the fire and rescue authority may commute the pension for a lump sum.

(2) The amount of a lump sum under this rule is the actuarial equivalent calculated from tables prepared by the Government Actuary.

### PART 3

#### AWARDS ON DEATH: SPOUSES AND CIVIL PARTNERS

##### Special award for spouse or civil partner

1.—(1) This rule applies where a person who is or has been a regular firefighter dies from the effects—

- (a) of a qualifying injury; or
- (b) of infirmity of mind or body occasioned by a qualifying injury,

leaving a surviving spouse or civil partner.

(2) Subject to rule 3 and 4, the surviving spouse or civil partner is entitled—

- (a) to a special pension calculated in accordance with Part 1 of Schedule 2 to this Part, and
- (b) subject to paragraph (5), to a gratuity.

(3) Where the deceased died while serving as a regular firefighter, the amount of the gratuity is the total of 25% of the deceased's average pensionable pay and the greater of—

- (a) as regards a surviving spouse—
  - (i) the deceased's average pensionable pay; and
  - (ii) two and a quarter times the amount of the pension that would have been payable under rule B3 of the Pension Scheme (ill-health award) if on the date of the deceased's death the deceased had retired on the ground of permanent disablement;

(b) as regards a surviving civil partner—

- (i) the deceased's average pensionable pay; and
- (ii) two and a quarter times such amount as bears to the amount of the pension referred to in sub-paragraph (a)(ii) to which the surviving civil partner would have been entitled had the surviving civil partner been the deceased's surviving spouse, the same proportion that the deceased's service after 5th April 1988 bears to the whole of the deceased's pensionable service.

(4) In any other case the amount of the gratuity is 25% of the deceased's average pensionable pay.

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<sup>(13)</sup> 1971 c. 56.

<sup>(14)</sup> 2004 c. 12. As to "the lump sum rule", see section 166 of that Act.

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(5) Where the deceased was entitled to an injury gratuity under rule 1 of Part 2 (injury award)—

- (a) if it was of the same or a larger amount, no gratuity is payable under this rule, and
- (b) if it was of a smaller amount, the gratuity under this rule shall be reduced by that amount.

### **Augmented award for spouse or civil partner**

2.—(1) This rule applies where a person who is or has been a regular firefighter dies from the effects—

- (a) of a qualifying injury; or
- (b) of infirmity of mind or body occasioned by a qualifying injury,

leaving a surviving spouse or civil partner, and one of the conditions in paragraph (2) is satisfied.

(2) The conditions are—

- (a) that the injury was received in the execution of duties performed, in circumstances in which there was an intrinsic likelihood of the person receiving a fatal injury, for the immediate purpose of saving the life of another person or of preventing loss of human life;
- (b) that the fire and rescue authority are of the opinion that the preceding condition may be satisfied and that this rule should apply; or
- (c) that the fire and rescue authority are of the opinion that the injury was received in such circumstances that it would be inequitable if this rule were not to apply.

(3) Where this rule applies, rule 1 of this Part applies with the modifications set out in paragraphs (4) and (5) below.

(4) For the purpose of calculating the special pension, Part 1 of Schedule 2 to this Part has effect with the substitution for “45%” of “50%”.

(5) Unless they produce a more favourable result, paragraphs (3) to (5) of rule 1 do not apply, and the amount of the gratuity is twice the annual pensionable pay, at the date of the death, of a regular firefighter employed in the role of firefighter by the London Fire and Emergency Planning Authority and entitled to reckon 30 years' service for the purposes of pay.

### **Limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership**

3.—(1) A surviving spouse or civil partner is not entitled to a special pension under rule 1 or an augmented pension under rule 2 unless the surviving spouse or civil partner was married to, or had a civil partnership with, the deceased during a period before the deceased last ceased to be a regular firefighter.

(2) A surviving spouse who, but for paragraph (1), would be entitled to a pension mentioned in that paragraph, is instead entitled to a pension calculated in accordance with Part 2 of Schedule 2 to this Part.

(3) A surviving civil partner who, but for paragraph (1), would be entitled to a pension mentioned in that paragraph, is instead entitled to a pension of such amount as bears to the pension to which, under paragraph (2), the surviving civil partner would have been entitled had the surviving civil partner been the deceased's surviving spouse, the same proportion that the deceased's service after 5th April 1988 bears to the whole of the deceased's pensionable service.

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### **Limitation where spouse or civil partner is living apart**

4.—(1) A surviving spouse or civil partner who at the time of the death was living apart from the deceased is not entitled to any award under rule 1 or 2 of this Part.

(2) Except where paragraph (3) applies, a surviving spouse or civil partner who, but for paragraph (1), would be entitled to an award under rule 1 or 2, is entitled instead to a requisite benefit pension calculated—

- (a) in the case of a surviving spouse, in accordance with Part V of Schedule 3 to the Pension Scheme; and
- (b) in the case of a surviving civil partner, in accordance with that Part subject to the substitution, in paragraphs 1 and 3, of “5th April 1988” for “5th April 1978”.

(3) Where—

- (a) the surviving spouse or civil partner would, but for paragraph (1), be entitled to an award under rule 1 or 2; and
- (b) at the time of the death the deceased was making relevant contributions, or was liable to do so by virtue of an agreement or of an order or decree of a competent court,

the surviving spouse or civil partner is entitled to a pension of the appropriate amount.

(4) Relevant contributions are contributions paid or payable—

- (a) for the support of the spouse or civil partner; or
- (b) to the spouse or civil partner for the support of a child of the spouse or civil partner,

the amount of which exceeds that of the requisite benefit pension that would otherwise be payable under paragraph (2).

(5) The appropriate amount is the lesser of—

- (a) the amount of a pension calculated in accordance with rule 1 or 2; and
- (b) the amount of the relevant contributions.

(6) The fire and rescue authority may determine that, for such period as they think fit, a pension under paragraph (2) or (3) shall be paid at such increased rate, not exceeding that of the pension which would have been payable but for paragraph (1), as they think fit.

(7) Where, but for paragraph (1), the surviving spouse or civil partner would be entitled to a gratuity, the fire and rescue authority may decide that the gratuity be paid in whole or part, as they think fit.

### **Effect of new relationship**

5.—(1) A person entitled to a pension under this Part who marries, remarries, forms a civil partnership or a subsequent civil partnership is not entitled to receive any payment on account of the pension in respect of any subsequent period; but if the marriage or civil partnership is dissolved or the other party to it dies, the fire and rescue authority may pay the whole or any part of the pension for such period after the dissolution or death as they think fit.

(2) Where a person entitled to a gratuity under this Part marries, remarries, forms a civil partnership or a subsequent civil partnership, any part of the gratuity that has not already been paid (“the outstanding amount”) ceases to be payable; but if the marriage or civil partnership is dissolved or the other party to it dies the fire and rescue authority may pay the person the whole or any part of the outstanding amount.

## PART 4

### AWARDS ON DEATH: CHILDREN

#### **Child's special allowance**

1.—(1) This rule applies where a person who is or has been a regular firefighter dies from the effects—

- (a) of a qualifying injury; or
- (b) of infirmity of mind or body occasioned by a qualifying injury,

leaving a child.

(2) Subject to rule 3, where this rule applies the child is entitled to a child's special allowance calculated in accordance with paragraph 1 of Part 1 of Schedule 3 to this Part.

#### **Child's special gratuity**

2.—(1) This rule applies where a person who is or has been a regular firefighter dies from the effects—

- (a) of a qualifying injury; or
- (b) of infirmity of mind or body occasioned by a qualifying injury,

leaving a child but not leaving a surviving spouse or civil partner entitled to a gratuity under rule 1 of Part 3, and one of the conditions in rule 2(2) of that Part is satisfied.

(2) Subject to rule 3, where this rule applies the child is entitled to a gratuity in addition to a child's special allowance.

(3) Where only one child is entitled to a gratuity, its amount is that specified in rule 2(5) of Part 3 ("the full amount"); where two or more children are entitled, the amount of each gratuity is the full amount divided by the number of children entitled.

#### **Child's special allowance or gratuity: limitations**

3.—(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;
- (b) by reason of the child 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;
- (c) by reason of the child being substantially dependent on the deceased, in respect of a child who was not so dependent before the relevant date;
- (d) by reason of his or her 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) No allowance under this Part shall be paid in respect of a person who—

- (a) has attained the age of 16 but has not attained the age of 17; and
- (b) is in full-time employment,

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unless the employment constitutes full-time vocational training.

(3) No allowance under this Part shall be paid in respect of a person who has attained the age of 17 unless—

- (a) the person is permanently disabled and one of the conditions in paragraph (4) is satisfied; or
- (b) the person is undergoing full-time education or full-time vocational training and either has not attained the age of 19 or the condition in paragraph (5) is satisfied.

(4) The conditions mentioned in paragraph (3)(a) are—

- (a) that the person was both permanently disabled and substantially dependent on the deceased at the time of the death;
- (b) that the person became permanently disabled while in receipt of an allowance under this Part; or
- (c) that the fire and rescue authority, having regard to all the circumstances, in their discretion determine to pay an allowance to the person.

(5) The condition mentioned in paragraph (3)(b) is that the person was undergoing full-time education or full-time vocational training immediately before the person's 19th birthday and either—

- (a) the person has since continued to do so without any period of interruption; or
- (b) the fire and rescue authority, having regard to all the circumstances, in their discretion determine to pay an allowance to the person notwithstanding any period of interruption.

(6) Part 2 of Schedule 3 to this Part has effect for the reduction, in certain circumstances, of allowances under this Part.

(7) No special gratuity under rule 2 shall be paid in respect of a person who attained the age of 17 before the date of the death unless at that date the person was—

- (a) undergoing full-time education or full-time vocational training; or
- (b) both permanently disabled and substantially dependent on the deceased.

## PART 5

### AWARDS ON DEATH: ADDITIONAL PROVISIONS

#### **Adult dependent relative's special pension**

**1.—**(1) This rule applies where a person who is or has been a regular firefighter dies from the effects—

- (a) of a qualifying injury; or
- (b) of infirmity of mind or body occasioned by a qualifying injury,

and there is an adult dependent relative.

(2) An adult dependent relative is—

- (a) a parent of the deceased; or
- (b) a brother or sister of the deceased who had attained the age of 19 before the death; or
- (c) a child of the deceased who has, whether before or after the death, attained the age of 19,

who was substantially dependent on the deceased immediately before the death.

(3) If the fire and rescue authority, having regard to all the circumstances of the case, in their discretion so determine, they may grant a special pension to an adult dependent relative.

(4) A special pension under this rule—

- (a) shall be calculated in accordance with Part 1 of Schedule 4 to this Part; and
- (b) is payable for such period or periods as the fire and rescue authority may, in their discretion, from time to time determine.

#### **Dependent relative's gratuity**

2.—(1) This rule applies where a person dies—

- (a) while serving as a regular firefighter; or
- (b) while in receipt of a pension other than a deferred pension,

and there is a dependent relative.

(2) A relative is a person who is, or is a child of, a surviving spouse or civil partner, or a parent, grandparent or child of the deceased, and a dependent relative is any relative who—

- (a) was substantially dependent on the deceased immediately before the death; and
- (b) is not entitled to any award under this Scheme.

(3) If the fire and rescue authority think fit, they may grant a gratuity to a dependent relative; but the aggregate of all gratuities granted under this paragraph in respect of the death shall not exceed the amount of the deceased's aggregate pension contributions.

#### **Lump sum in lieu of surviving spouse's or civil partner's pension**

3.—(1) Where the amount of any pension payable under Part 3, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit specified for the purposes of Part 1 of Schedule 29 to the Finance Act 2004(15) (lump sum rule), the fire and rescue authority may commute the pension for a lump sum.

(2) Where—

- (a) a surviving spouse or civil partner is entitled to a pension under rule 1 of Part 3;
- (b) the fire and rescue authority are satisfied that there are sufficient reasons;
- (c) the surviving spouse or civil partner consents; and
- (d) the deceased spouse or civil partner died before the deceased spouse or civil partner's 75th birthday,

the fire and rescue authority may commute the pension for a lump sum.

(3) A fire and rescue authority may under this rule commute a pension for a lump sum only when the pension first becomes payable.

(4) A lump sum under this rule shall be calculated in accordance with such guidance as is provided for the purpose by the Government Actuary.

#### **Gratuity in lieu of child's special allowance**

4.—(1) Where—

- (a) a child is entitled to a special allowance under rule 1 of Part 4;
- (b) the fire and rescue authority are satisfied that there are sufficient reasons; and

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(15) 2004 c. 12. As to "the lump sum rule", see section 166 of that Act.

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- (c) a surviving parent or the child's guardian, or if the child has neither, the child himself, consents,

the fire and rescue authority may commute for a gratuity the allowance or so much of it as may be commuted without contravening rule E7 of the Pension Scheme (limitation on discretion to commute pension or allowance for a gratuity).

(2) A gratuity under this rule shall be calculated in accordance with Part 2 of Schedule 4 to this Part.

### **Increase of pensions and allowances during first 13 weeks**

5.—(1) Paragraphs (2) to (4) apply to an award under rule 1 of Part 3 (special award for spouse or civil partner) (“survivor’s pension”) where the deceased died—

- (a) while serving as a regular firefighter, or
- (b) while in receipt of a pension.

(2) For each of the first 13 weeks for which it is payable the survivor’s pension shall, if necessary, be increased so that the total of—

- (a) the survivor’s pension; and
- (b) any children’s allowances payable under this Scheme or the Pension Scheme,

is not less than the appropriate amount.

(3) The appropriate amount is—

- (a) where paragraph (1)(a) applies, the deceased’s pensionable pay for a week; or
- (b) where paragraph (1)(b) applies, the weekly amount of the deceased’s pension together with any increase in it under the Pensions (Increase) Act 1971,

immediately before the death.

(4) For the purposes of paragraph (3)(b)—

- (a) any reduction in the deceased’s pension under paragraph 3 of Part 1 of Schedule 1 (reduction related to additional benefits) or under Part VIII of Schedule 2 to the Pension Scheme (reduction related to uprating of widows' pensions) shall be disregarded; and
- (b) where the deceased died while in receipt of an injury pension as well as an ordinary, short service or ill-health pension, the reference to the weekly amount of the deceased’s pension shall be construed as a reference to the aggregate weekly amount of both the pensions.

(5) Paragraphs (6) and (7) apply to a child’s special allowance under this Scheme and a child’s ordinary or accrued allowance under the Pension Scheme where the deceased died as mentioned in paragraph (1) and—

- (a) there is no surviving spouse or civil partner; or
- (b) a surviving spouse or civil partner did not become entitled to a pension which was payable for a continuous period of 13 weeks.

(6) Subject to paragraph (7), for each of the first 13 weeks for which it is payable an allowance shall, if necessary, be increased—

- (a) so that the amount paid in respect of it is not less than the appropriate amount ascertained in accordance with paragraphs (3) and (4); or
- (b) where two or more allowances are payable, so that the amount paid in respect of each of them is not less than that appropriate amount divided by the number of allowances.



(7) No allowance shall be increased under paragraph (6) for any week for which an injury pension under this Scheme or a pension under the Pension Scheme is payable to a surviving spouse or civil partner.

## PART 6

### DETERMINATION OF QUESTIONS AND APPEALS

#### **Determination by fire and rescue authority**

1.—(1) The question whether a person is entitled to any and if so what awards shall be determined in the first instance by the fire and rescue authority.

(2) Subject to paragraph (3), before deciding, for the purpose of determining that question or any other question arising under this Scheme—

- (a) whether any disablement has been occasioned by a qualifying injury;
- (b) the degree to which a person is disabled; or
- (c) any other issue wholly or partly of a medical nature,

the authority shall obtain the written opinion of an independent qualified medical practitioner selected by them and the opinion of the independent qualified medical practitioner shall be binding on the authority.

(3) In the independent qualified medical practitioner's written opinion, the independent qualified medical practitioner must certify that—

- (a) the independent qualified medical practitioner has not previously advised, or given an opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and
- (b) the independent qualified medical practitioner is not acting, and has not at any time acted, as the representative of the employee, the authority, or any other party in relation to the same case.

(4) If by reason of the person's refusal or wilful or negligent failure to submit to medical examination by the practitioner selected by them the authority are unable to obtain the opinion mentioned in paragraph (2), they may—

- (a) on such other medical evidence as they think fit; or
- (b) without medical evidence,

give such decision on the issue.

#### **Appeal to medical referee**

2.—(1) Where—

- (a) an opinion of the kind mentioned in rule 1(2) has been obtained; and
- (b) within 14 days of being notified of the fire and rescue authority's decision on the issue the person concerned applies to them for a copy of the opinion,

the authority shall supply the person with a copy.

(2) If the person concerned is dissatisfied with the opinion which has been supplied under paragraph (1), the person may appeal against it by giving notice to the fire authority in accordance with paragraph 1 of Schedule 5 to this Part.

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(3) A fire and rescue authority shall be bound by any decision on any issue referred to in sub-paragraphs (a) to (c) of rule 1(2) duly given on an appeal under this rule.

(4) Further provisions as to appeals under this rule are contained in Schedule 5 to this Part.

### **Appeal to Sheriff Court**

**3.—**(1) Where a person claims that he or she is entitled to an award or to any payment in respect of an award and the fire and rescue authority—

- (a) do not admit the claim at all; or
- (b) do not admit the claim to its full extent,

the authority shall reconsider the case if he or she applies to them to do so.

(2) If the person is dissatisfied with any determination given by the fire and rescue authority on reconsidering the case, the person may appeal to the Sheriff Court, which may, subject to sub-paragraph (3), make such order or declaration in the matter as appears to it to be just.

(3) Nothing in paragraph (2) shall be taken to authorise the Sheriff Court—

- (a) to make an order or declaration controlling the exercise of any discretion vested in the fire and rescue authority by any provision of this Scheme except rule 5 of Part 9 (withdrawal of pension on conviction of certain offences);
- (b) to reopen any medical issue decided on an appeal under rule 2; or
- (c) to question any certificate as to pensionable service which has become conclusive under rule F1(5) of the Pension Scheme (reckoning of and certificates as to pensionable service).

## **PART 7**

### **SERVICEMEN**

#### **Interpretation of Part 7**

**1.—**(1) A serviceman is a person who, immediately before undertaking relevant service in the armed forces, was a regular firefighter.

(2) For the purposes of this Scheme a serviceman shall be treated as having continued to be a regular firefighter during the serviceman's period of relevant service in the armed forces (referred to in this Part as the serviceman's "forces period").

(3) References in this Part to relevant service in the armed forces are references to—

- (a) service specified in Schedule 1 to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(16) ("the 1951 Act"), other than service specified in paragraph 5(b) of that Schedule; and
- (b) service for the purposes of training only performed by a person mentioned in paragraph 7 of Schedule 1 to the 1951 Act for a period shorter than 7 days.

#### **Awards to servicemen**

**2.—**(1) This rule applies to a serviceman who, at the end of the serviceman's forces period, is permanently disabled.

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(16) 1951 c. 65.

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(2) Subject to paragraph (3), rule B3 of the Pension Scheme (ill-health award) has effect in relation to a serviceman to whom this rule applies as if the serviceman had been required to retire under rule A15 of the Pension Scheme (compulsory retirement on grounds of disablement) at the end of the serviceman's forces period.

(3) Where the infirmity that occasioned the serviceman's incapacity for the performance of duty was occasioned by an injury received during the serviceman's forces period or by a qualifying injury the fire and rescue authority may—

- (a) pay the serviceman, instead of an ill-health gratuity under rule B3(2)(b) of the Pension Scheme, a pension at the rate of 1/12th of the serviceman's average pensionable pay, and
- (b) subject to paragraph (4), increase any such pension.

(4) Paragraph 1 of Schedule 6 to this Part has effect for limiting increases under paragraph (3)(b).

### **Awards on death of servicemen**

3.—(1) This rule applies in the case of a serviceman who—

- (a) dies during the serviceman's forces period; or
- (b) was permanently disabled at the end of the serviceman's forces period, has not since been a regular firefighter, and dies either from the effects of an injury that occasioned the serviceman's incapacity for the performance of duty or while in receipt of a pension.

(2) If the serviceman dies from the effects of an injury received during the serviceman's forces period or a qualifying injury the fire and rescue authority may—

- (a) pay the surviving spouse or civil partner, instead of a gratuity under rule C7(2)(b) of the Pension Scheme, a pension of the appropriate amount; and
- (b) subject to paragraph (4), increase any such pension and any pension or child's allowance payable under rule C1 or D1 of the Pension Scheme.

(3) The appropriate amount mentioned in paragraph (2)(a) is £379.78 increased as described in rule E9(7) and (8) of the Pension Scheme (flat-rate awards).

(4) Paragraphs 2 and 3 of Schedule 6 to this Part have effect for limiting increases under paragraph (2)(b).

### **Servicemen who resume service as regular firefighters**

4.—(1) Paragraphs (3) and (4) of rule 2 or, as the case may be, paragraphs (2) to (4) of rule 3 shall apply in relation to a serviceman who, having sustained an injury during the serviceman's forces period and resumed service as a regular firefighter—

- (a) is permanently disabled; or
- (b) dies, whether or not while serving as a regular firefighter,

as they apply in relation to servicemen to whom rule 2 or, as the case may be, rule 3 applies.

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## PART 8 SPECIAL CASES

### **Award for or in relation to employee who is not a regular or retained firefighter**

1.—(1) This rule applies where a person who is an employee of a fire and rescue authority but is not a regular or retained firefighter suffers an injury, without that person's own default—

- (a) while in attendance at a fire; and
- (b) in the execution of that person's duties as an employee of the authority.

(2) If the person retires in consequence of the injury, the fire and rescue authority may, subject to paragraph (4), grant the person such pension or gratuity as they think fit.

(3) If the person dies from the effects of the injury, either before or after retiring from that employment, the fire and rescue authority may, subject to paragraph (4)—

- (a) grant such pension and gratuity as they think fit to any surviving spouse or civil partner; and
- (b) grant such allowance as they think fit to any child.

(4) The total of—

- (a) any benefit under this paragraph; and
- (b) any relevant additional benefit payable to the recipient,

must not exceed the appropriate amount.

(5) An additional benefit is any payment of whatever nature made—

- (a) by the fire and rescue authority otherwise than under this rule;
- (b) by any other local authority; or
- (c) by a Scottish Minister,

except a benefit payable under Chapter IV or Chapter V of Part II of the Social Security Act 1975<sup>(17)</sup>; and a relevant additional benefit is, in relation to a pension or allowance under this rule, one by way of periodical payments and, in relation to a gratuity under this rule, one otherwise than by way of periodical payments.

(6) The appropriate amount is—

- (a) for a pension or gratuity under paragraph (2), that of the injury pension or gratuity under rule 1 of Part 2;
- (b) for a pension or gratuity under paragraph (3)(a), that of the special pension or gratuity under rule 1 of Part 3; and
- (c) for an allowance under paragraph (3)(b), that of the special allowance under rule 1 of Part 4,

which would have been payable on the required assumptions.

(7) The required assumptions are—

- (a) in every case, that the person was employed in the role of firefighter;
- (b) where paragraph (2) applies, that the person retired on account of a qualifying injury during the first year of service and that paragraph 2 of Part 1 of Schedule 1 to Part 2 (reduction of injury pension on account of certain other pensions) did not apply; and

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(17) 1975 c. 14.

- (c) where paragraph (3) applies, that the person died or retired during the first year of service and died from the effects of a qualifying injury.

### **Award for or in relation to a retained or volunteer firefighter**

2.—(1) This paragraph applies to a person—

- (a) who was employed by a fire and rescue authority as a retained firefighter or volunteer firefighter;
- (b) has retired; and
- (c) is permanently disabled,

if the infirmity that occasioned the person's incapacity for the performance of duty was occasioned by a qualifying injury.

(2) A person to whom paragraph (1) applies shall be treated for the purposes of rules 1 and 3 of Part 2 (injury awards) as having been a regular firefighter falling within the description in paragraph (10) below.

(3) Rules B7 (commutation), B9 (allocation), and B10 (limitation of commuted or allocated portion) of the Pension Scheme<sup>(18)</sup> shall apply in relation to the awards to which, by virtue of paragraph (2) above, the person is entitled.

(4) A person to whom paragraph (1) applies shall be treated for the purposes of rule B3 (ill-health awards) of the Pension Scheme as having been a regular firefighter falling within the description in paragraph (10) below; and rules B7 (commutation), B9 (allocation), B10 (limitation of commuted or allocated portion), K1 (review of ill-health and certain deferred pensions), K1A (consequences of review) and K3 (reduction in case of default) apply accordingly in relation to the awards to which the person is thus entitled.

(5) This paragraph applies where a person who is or has been employed by a fire and rescue authority as a retained firefighter or who is or has been a volunteer firefighter dies from the effects—

- (a) of a qualifying injury; or
- (b) of infirmity of mind or body occasioned by a qualifying injury.

(6) Where paragraph (5) applies and the deceased leaves a surviving spouse or civil partner, the deceased shall be treated for the purposes of rules 1 and 2 of Part 3 (spouse's or civil partner's special and augmented awards) as having been a regular firefighter falling within the description in paragraph (10) below.

(7) Rules 3, 4 and 5 of Part 3 (limitation with reference to date of marriage or formation of civil partnership and where spouses or civil partners living apart, and effect of new relationship), rule 3 of Part 5 (gratuity in lieu of surviving spouse's or civil partner's pension) and rule 5 of that Part (increase of pensions and allowances during first 13 weeks) shall apply in relation to the awards to which, by virtue of paragraph (6) above, the spouse or civil partner is entitled.

(8) Where paragraph (5) applies and the deceased leaves a child, the deceased shall be treated for the purposes of rules 1 and 2 of Part 4 (child's special allowance and gratuity) as having been a regular firefighter falling within the description in paragraph (10) below.

(9) Rule 3 of Part 4 (child's special allowance or gratuity: limitations), rule 3 of Part 5 (gratuity in lieu of child's special allowance) and rule 5 of that Part (increase of pensions and allowances during first 13 weeks) shall apply in relation to the awards to which, by virtue of paragraph (8) above, the child is entitled.

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(18) Rule K1A is inserted by [S.S.I. 2006/342](#), Schedule 1, paragraph 46.

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- (10) The regular firefighter mentioned in paragraphs (2), (4) (6) or (8) is one who is a whole-time employee of a fire and rescue authority and—
- (a) was employed in the same role as the retained or volunteer firefighter and had the same service in that role;
  - (b) was entitled to reckon as pensionable service a period equal to the retained or volunteer member's service as such; and
  - (c) in respect of any service before 1st April 1980 paid pension contributions at the rate of 6p a week less than 6.75% of pensionable pay.

**Employees other than regular firefighters: supplementary**

- 3.—(1) Part 1 applies for the interpretation of rules 1 and 2.  
(2) Parts 6, 9 and 10 apply in relation to awards under rules 1 and 2 of this Part.

## PART 9

### REVIEW, WITHDRAWAL AND FORFEITURE OF AWARDS

**Review of injury pension**

- 1.—(1) Where a person is in receipt of an injury pension, the fire and rescue authority shall, at such intervals as they think proper, consider whether the degree of the person's disablement has substantially altered; if they find that it has, the pension shall be reassessed accordingly.
- (2) Where the authority, on consideration under paragraph (1), find that the disability has ceased, the injury pension shall cease with immediate effect.
- (3) This rule ceases to have effect with respect to a particular injury pension if, at any time after the expiration of 5 years from the time when it first became payable, the fire and rescue authority so resolve.

**Reduction of award in case of default**

- 2.—(1) Subject to paragraph (2), where a person—
- (a) is permanently disabled; and
  - (b) has brought about or contributed to the person's infirmity by that person's own default,
- the fire and rescue authority may reduce any injury award payable to the person by them to not less than half its full amount.
- (2) Where—
- (a) a pension has been reduced under paragraph (1); and
  - (b) when the person attains the age of 60, the amount of the reduced pension is less than that of the notional deferred pension,
- the amount of the reduced pension shall be increased to that of the notional deferred pension.
- (3) The notional deferred pension is the deferred pension that would have been payable under rule B5 of the Pension Scheme<sup>(19)</sup> if the person had become entitled to one on the date of the person's ceasing to serve.

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<sup>(19)</sup> Rule B5 was amended by [S.S.I. 2005/566](#), paragraph 15 to Schedule.

### **Withdrawal of pension during service as regular firefighter**

3. The fire and rescue authority by whom a pension under this Scheme is payable may withdraw the whole or any part of the pension, except a pension under Part 3 (awards on death: spouses and civil partners), for any period during which the person entitled to it is employed as a regular firefighter by any fire and rescue authority.

### **Withdrawal of pension on conviction of certain offences**

4.—(1) In the circumstances specified in paragraph (2) the fire and rescue authority by whom a pension under this Scheme is payable may withdraw the pension in whole or in part and permanently or temporarily as they may specify.

(2) The circumstances are—

- (a) that the person entitled to the pension (“the pensioner”) has been convicted of an offence falling within paragraph (3), and in the case of a pension under Part 3, that the offence was committed after the death on which the pensioner became entitled to it; or
- (b) that the pensioner has been convicted of an offence committed in connection with the pensioner’s service as an employee of a fire and rescue authority which is certified by the Scottish Ministers either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

(3) The offences mentioned in paragraph (2)(a) are—

- (a) an offence of treason; and
- (b) one or more offences under the Official Secrets Acts 1911 to 1989<sup>(20)</sup> for which the pensioner has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

(4) The fire and rescue authority may, to such extent as they at any time think fit—

- (a) apply for the benefit of any dependant of the pensioner; or
- (b) restore to the pensioner,

so much of any pension as has been withdrawn under this rule.

### **Forfeiture of award**

5. Where a person has been convicted of an offence under subsection (6) of section 34 of the Fire and Rescue Services Act 2004 (acts or omissions for purposes of obtaining awards or other sums), the fire and rescue authority may cause the person to forfeit the whole or part of an award made under this scheme.

## **PART 10**

### **PAYMENT OF AWARDS AND FINANCIAL PROVISIONS**

#### **Authorities responsible for payment of awards**

1.—(1) An award payable under this Scheme to or in respect of a person by reason of having received an injury while employed by a fire and rescue authority, but not as a regular

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(20) 1911 c. 28, 1920 c. 75, 1939 c. 121, 1989 c. 6.

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firefighter, is payable by the authority by whom the person was employed when the person received the injury.

(2) Subject to paragraph (3), an award payable in respect of a qualifying injury sustained by a person who is employed as both a regular firefighter and a retained firefighter shall be paid—

- (a) where the injury is sustained in the course of the person’s regular employment, by the fire and rescue authority which employs the person as a regular firefighter;
- (b) where the injury is sustained in the course of the person’s retained employment, by the fire and rescue authority which employs the person as a retained firefighter;
- (c) where the injury is of such a nature that it cannot be attributed solely to either the person’s regular employment or the person’s retained employment—
  - (i) by such one of the person’s employing authorities as may be agreed;
  - (ii) by both of them, in such proportion as may be agreed; or
  - (iii) in default of agreement, in equal proportions.

(3) An award payable to a person in respect of both a qualifying injury sustained in the course of the person’s regular employment and a different qualifying injury sustained in the course of the person’s retained employment, shall be paid—

- (a) by such one of the person’s employing authorities as may be agreed; or
- (b) by both of them, in such proportion as may be agreed; or
- (c) in default of agreement, in equal proportions.

### **Payment of awards**

2.—(1) While a pension or allowance is payable under this Scheme—

- (a) it is payable in respect of each week; and
- (b) the fire and rescue authority shall discharge their liability in respect of it by making payments in advance at such reasonable intervals as they may determine,

but payment may be delayed to the extent necessary for determining any question as to the liability of the authority.

(2) Where a person dies after receiving a payment in advance in respect of a pension or allowance, no claim for repayment shall be made on the ground that the payment or any part of it is referable to a period after that person’s death.

(3) Where, after receiving a payment in advance in respect of a pension under Part 3, a person marries, remarries, forms a civil partnership or a subsequent civil partnership, no claim for repayment shall be made on the ground that the payment or any part of it is referable to a period after the marriage took place or, as the case may be, the civil partnership was formed.

(4) Subject to paragraphs (5) and (6), pensions under Part 3 and allowances under Part 4 (“survivors’ benefits”) are payable from the date of the death.

(5) Subject to sub-paragraph (6) in the case of a posthumous child any allowance under Part 4 is payable from the date of the child’s birth.

(6) Where the deceased—

- (a) was in receipt of a pension; and
- (b) died during a period in respect of which the deceased had already received it,

no survivors’ benefits are payable before the end of that period.

(7) A gratuity shall be paid in one sum as soon as the entitlement to it arises, except that—



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- (a) payment may be delayed to the extent necessary for determining any question as to the liability of the fire and rescue authority; and
- (b) if the authority are satisfied that it would be to the advantage of the person entitled, they may pay a gratuity in instalments of such reasonable amounts and over such reasonable period as they think fit.

### **Prevention of duplication**

3.—(1) This rule applies where, in respect of any particular period, a person is entitled to—

- (a) two or more pensions or allowances under this Scheme; or
- (b) a pension or allowance under this Scheme and a pension or allowance under the Pension Scheme.

(2) A pension payable—

- (a) under rule B9 of the Pension Scheme(21) to the beneficiary of an allocation;
- (b) under rule N2 of that Scheme (pension credit member's entitlement to pension); or
- (c) under rule J1 of that Scheme (guaranteed minimum pensions)(22),

is not a pension for the purposes of this rule.

(3) Subject to paragraph (4) and rule L4B of the Pension Scheme(23), where this rule applies only one of the pensions or allowances shall be paid in respect of the period in question; if they are for the time being unequal in amount, the one to be paid is the largest of them.

(4) For the purposes of this rule, where a person is entitled—

- (a) under rule 1 of Part 2 to an injury pension and also under rule B1, B2, B3 or B5 of the Pension Scheme to an ordinary, short service, ill-health or deferred pension;
- (b) to a pension in respect of employment with a fire and rescue authority and also to a pension as the surviving spouse or civil partner of an employee of a fire and rescue authority; or
- (c) to pensions as the surviving child of both parents who were employed by a fire and rescue authority,

those pensions shall be treated as one.

(5) Where—

- (a) a person who is employed as a retained firefighter by more than one fire and rescue authority sustains a qualifying injury; and
- (b) it cannot be established that the injury is attributable to only one of those employments,

a single award shall be paid under rule 2 of Part 8; and the award shall be payable by the fire and rescue authorities by whom the person is so employed in such proportion as may be agreed or, in default of agreement, in equal shares.

(6) If a transfer value or cash equivalent is paid, any award to which the person became entitled under Part 2 on ceasing to serve as a regular firefighter ceases to be payable.

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(21) Rule B9 was amended by [S.S.I. 2005/566](#), paragraph 19 to Schedule and [S.I. 2005/3228](#), Schedule 1, paragraph 2.

(22) Rule J1 was amended by [S.S.I. 2005/566](#), paragraph 64 to Schedule and [S.I. 2005/3228](#), Schedule 1, paragraph 20.

(23) Rule L4B was inserted by [S.S.I. 2005/566](#), paragraph 77 to Schedule and amended by [S.I. 2005/3228](#), Schedule 1, paragraph 26.

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**Prevention of duplication: other injury awards for persons who are both regular and retained firefighters**

4.—(1) This rule applies in relation to a person employed as both a regular firefighter and a retained firefighter who is entitled—

- (a) from the fire and rescue authority which employs the person as a regular firefighter, to an injury award under rule 1 of Part 2, an ill-health award under rule B3 of the Pension Scheme, or awards under both of those rules; and
- (b) from the fire and rescue authority which employs the person as a retained firefighter, to an injury award under Part 2 (by virtue of rule 2 of Part 8) (“the Part 8 award”) and an ill-health award under rule B3 of the Pension Scheme.

(2) The fire and rescue authority which employs the person as a regular firefighter shall pay the award under rule B3 of the Pension Scheme in full and, subject to paragraph (3), the authority which employs the person as a retained firefighter shall pay only the injury element of the Part 8 award.

(3) Where the amount awarded under rule B3 of the Pension Scheme is less than the amount which, but for paragraph (2), would have been paid to the person as the ill-health element of the Part 8 award, the fire and rescue authority which employs the person as a retained firefighter shall pay the person an amount equal to the amount of the difference.

(4) A firefighter who is entitled to both an award under rule 1 of Part 2 and a Part 8 award shall receive a single award of an amount equal to the award under that rule or the Part 8 award, whichever is greater; and rule 1(2) of this Part shall apply as regards the payment of that single award.

**Prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters**

5.—(1) This rule applies where—

- (a) a person employed as both a regular firefighter and a retained firefighter dies (whether during or after such employment);
- (b) a qualifying injury sustained in the course of such employment is certified by an independent qualified medical practitioner as the cause of death; and
- (c) in consequence of the person’s death, another person becomes entitled not only to an award of a description mentioned in paragraph (2), but also to an award of a description mentioned in paragraph (3).

(2) The descriptions mentioned in this paragraph are—

- (a) a spouse’s or civil partner’s special award under rule 1 of Part 3;
- (b) a spouse’s or civil partner’s augmented award under rule 2 of that Part;
- (c) a child’s special allowance under rule 1 of Part 4; and
- (d) a child’s special gratuity under rule 2 of that Part.

(3) The descriptions mentioned in this paragraph are—

- (a) a spouse’s or civil partner’s ordinary pension under rule C1 of the Pension Scheme;
- (b) a spouse’s or civil partner’s accrued pension under rule C4 of that Scheme;
- (c) a spouse’s or civil partner’s requisite benefit and temporary pension under rule C6 of that Scheme;
- (d) a spouse’s or civil partner’s award under rule C7 of that Scheme (award where no other award is payable);

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- (e) a child’s ordinary allowance under rule D1 of that Scheme; and
- (f) a child’s accrued allowance under rule D4 of that Scheme.

(4) The award of the description in paragraph (3) shall be paid in full, and the award of the description in paragraph (2) shall not be paid.

(5) Where the amount of the award paid to a person in accordance with paragraph (4) is less than the amount which, but for that paragraph, would have been paid to the person by way of an award of a description in paragraph (2), the fire and rescue authority which employed the deceased as a retained firefighter shall pay an amount equal to the amount of the difference.

SCHEDULE 1 to PART 2

Part 2

INJURY AWARDS AND DUTY-RELATED COMPENSATION

PART 1

CALCULATION OF AWARDS FOR FULL-TIME SERVICE

1.—(1) Subject to Part 2 of this Schedule, the amounts of the injury gratuity and the injury pension shall be calculated by reference to the Table below.

(2) In the headings in the Table references to relevant service are references to service which either was, or would but for an election under rule G3 of the Pension Scheme or a failure to elect under rule G2A of that Scheme have been, reckonable as pensionable service.

**Table**

<i>Percentage disablement</i>	<i>Gratuity as percentage of average pensionable pay</i>	<i>Pension as percentage of average pensionable pay</i>			
		<i>Less than 5 years' relevant service</i>	<i>5 or more but less than 15 years' relevant service</i>	<i>15 or more but less than 25 years' relevant service</i>	<i>25 or more years' relevant service</i>
25 or less (slight disablement)	12.5	15	30	45	60
More than 25 but not more than 50 (minor disablement)	25	40	50	60	70
More than 50 but not more than 75 (major disablement)	37.5	65	70	75	80

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<i>Percentage disablement</i>	<i>Gratuity as percentage of average pensionable pay</i>	<i>Pension as percentage of average pensionable pay</i>			
More than 75 (severe disablement)	50	85	85	85	85

2.—(1) The amount of a person’s injury pension under rule 1 of Part 2 shall be reduced by three quarters of the amount of any other pension referable to the person’s service as a firefighter (including, if rule 4 of Part 10 applies in that person’s case, the aggregate of the pension to which the person is entitled under rule B3 of the Pension Scheme and the amount of the difference referred to in rule 4(3) of Part 10).

(2) The amount of a person’s injury pension calculated in accordance with paragraph 1 shall be reduced by three quarters of the amount of any other pension calculated by reference to pensionable service reckonable by virtue of the period of service during which the person received the qualifying injury or, where an election under rule G3 of the Pension Scheme had effect or the person failed to make an election under rule G2A of that Scheme, by the amount of any other pension which would otherwise have been so calculated.

(3) For the purposes of sub-paragraphs (1) and (2), any reduction of the other pension—

- (a) under rule B7 (commutation) or B9 (allocation) of the Pension Scheme;
- (b) under Part VIII of Schedule 2 to that Scheme; or
- (c) by virtue of a pension debit,

shall be disregarded.

3.—(1) In respect of any week for which the person is entitled to an additional benefit mentioned in sub-paragraph (2) the amount of the person’s injury pension calculated in accordance with paragraph 1 shall, subject to sub-paragraph (6), be reduced by the amount of the benefit.

(2) The additional benefits are—

- (a) so much of any disablement pension under section 57 of the Social Security Act 1975(24) (“the 1975 Act”) as relates to the qualifying injury, together with any relevant increase;
- (b) so much of any reduced earnings allowance under section 59A of the 1975 Act as relates to the qualifying injury; and
- (c) until the material date, any benefit mentioned in sub-paragraph (3), together with any relevant increase.

(3) The material date for the purposes of sub-paragraph (2)(c) is the first day after the person’s retirement which is not, or is deemed not to be, a day of incapacity for work within the meaning of section 14 or 15 of the 1975 Act, or, as the case may be, a day on which the person is incapable for work within the meaning of section 36 of the 1975 Act, and the benefits are—

(24) 1975 c. 14, amended, as respects the provisions mentioned in this paragraph by the Social Security Pensions Act 1975 (c. 60), section 18(1) and Schedule 4, Part I; by the Child Benefit Act 1975 (c. 61), Schedules 4 and 5; by the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), sections 5 and 22 and Schedule 2; by the Social Security Act 1979 (c. 18), Schedules 1 and 3; by the Social Security Act 1980 (c. 30), Schedules 1 and 5; by the Social Security (No. 2) Act 1980 (c. 39), section 3; by the Social Security and Housing Benefits Act 1982 (c. 24), section 39, Schedule 2, Schedule 4 Part I and Schedule 5; and by the Social Security Act 1986 (c. 50), Schedule 3.

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- (a) any sickness benefit under section 14 of the 1975 Act, including one to which the person is only entitled by virtue of section 50A of that Act;
  - (b) any invalidity pension under section 15 of the 1975 Act, including any additional component comprised in it in pursuance of section 14 of the Social Security Pensions Act 1975; and
  - (c) any severe disablement allowance under section 36 of the 1975 Act.
- (4) In relation to the additional benefit mentioned in sub-paragraph (2)(a), relevant increases comprise any increase in the benefit attributable to an increase in the pension—
- (a) by way of unemployability supplement under section 58 of the 1975 Act, excluding any increase under section 59 in the supplement;
  - (b) under section 60 of the 1975 Act (special hardship); or
  - (c) under section 64 or 66 of the 1975 Act (dependants),

and so long as the person is receiving treatment as an in-patient at a hospital as a result of the qualifying injury, any increase in the pension under section 62 of the 1975 Act (hospital treatment).

(5) In relation to the additional benefits referred to in sub-paragraph (2)(c), any increase under any provision of Chapter III of Part II of the 1975 Act (dependants) is a relevant increase.

(6) Where the provisions governing scales of additional benefits have changed after the person ceased to be a regular firefighter, the amount of the reduction in the person's injury pension in respect of any week on account of a particular benefit shall not exceed what it would have been if those provisions had not changed; where the benefit includes an amount attributable to an increase under section 60 of the 1975 Act (special hardship), it is to be assumed that the increase would have borne the same relationship to the former maximum for increases under that section.

(7) Where a person has become entitled to a disablement gratuity under section 57 of the 1975 Act in respect of the qualifying injury, this paragraph has effect as if the person were entitled under that section during the relevant period to a disablement pension of the amount that would be produced by converting the gratuity into an annuity for that period; the relevant period is the period taken into account, in accordance with section 57 of the 1975 Act, for the purpose of making the assessment by reference to which the gratuity became payable.

4. No payment shall be made in respect of an injury pension for any week in which the aggregate reductions under paragraphs 2 and 3 equal or exceed the amount of the pension calculated in accordance with paragraph 1.

## PART 2

### CALCULATION OF AWARDS FOR PART-TIME SERVICE

1.—(1) Where some or all of a person's service, by virtue of which the person's pensionable service is reckonable, is part-time service, the person's injury gratuity or pension under Part 1 shall be calculated in accordance with this Part.

2.—(1) The amount of the gratuity or pension is—

$$(A \times (B + C)) : D$$

where—

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A is the amount of that award calculated under Part 1 if the average pensionable pay was the pay the person would have received had the person been a whole-time employee of a fire and rescue authority;

B is the period in years of the person’s pensionable service as a whole-time employee of a fire and rescue authority;

C is the period in years of the person’s pensionable service as a part-time employee of a fire and rescue authority, expressed as a fraction, where the numerator is the total number of contractual hours during the part-time service and the denominator is the number of contractual hours for one year of whole-time service; and

D is the period in years of the person’s pensionable service.

(2) Neither (B + C) nor D shall exceed 30 years.

SCHEDULE 2 to PART 3

Part 3

AWARDS FOR SPOUSES AND CIVIL PARTNERS

PART 1

SPECIAL PENSION

1. Subject to paragraph 2, the weekly amount of a special pension is 45% of the deceased’s average pensionable pay for a week.

2.—(1) Where some or all of the deceased’s service, which is reckonable as pensionable service, was part-time service, the amount of special pension shall be calculated in accordance with the formula—

$$(A \times (B + C)) \div D$$

where—

A is the amount calculated under paragraph 1 of Part 1 of this Schedule if the average pensionable pay was the pay the deceased would have received had the deceased been a whole-time employee of a fire and rescue authority;

B is the period in years of the deceased’s pensionable service as a whole-time employee of a fire and rescue authority;

C is the period in years of the deceased’s pensionable service as a part-time employee of a fire and rescue authority, expressed as a fraction, where the numerator is the total number of contractual hours during the part-time service and the denominator is the number of contractual hours for one year of whole-time service; and

D is the period in years of the deceased’s pensionable service.

(2) Neither (B + C) nor D shall exceed 30 years.

## PART 2

### AWARD FOR SURVIVING SPOUSE OR CIVIL PARTNER OF POST-RETIREMENT MARRIAGE OR CIVIL PARTNERSHIP

1.—(1) Where the surviving spouse would otherwise have been entitled to a special award under rule 1 of Part 3 or an augmented award under rule 3 of that Part, the amount of the surviving spouse's pension under that Part shall, subject to sub-paragraph (2), be calculated in accordance with paragraph 1 of Part 1 of Schedule 3 to the Pension Scheme in the same way as that of an ordinary pension.

(2) For the purposes of this paragraph, paragraph 1 of Part 1 of Schedule 3 to the Pension Scheme has effect—

- (a) as if the reference in sub-paragraph (1)(a) to the base pension were a reference to the appropriate proportion of the base pension; and
- (b) as if the base pension were the ill-health pension to which the deceased would have been entitled if the deceased had, when the deceased ceased to serve, retired because the deceased was disabled in circumstances entitling the deceased to such a pension.

2. The appropriate proportion mentioned in paragraph 1(2)(a) is the proportion which the deceased's relevant pensionable service bears to the deceased's total pensionable service.

#### SCHEDULE 3 to PART 4

Part 4

#### AWARDS ON DEATH: CHILDREN

## PART 1

### CHILD'S SPECIAL ALLOWANCE

1. Subject to paragraph 4, the amount of a child's special allowance is the appropriate percentage of the deceased's average pensionable pay.

2. Where one of the child's parents is alive—

- (a) if fewer than 5 special allowances are payable in respect of the death, the appropriate percentage is 10; and
- (b) if 5 or more special allowances are payable, the appropriate percentage is 40 divided by the number of allowances.

3. In respect of any period during which neither of the child's parents is alive—

- (a) if fewer than 5 special allowances are payable in respect of the death, the appropriate percentage is 20; and
- (b) if 5 or more special allowances are payable, the appropriate percentage is 80 divided by the number of allowances.

4.—(1) Where some or all of the deceased's service, which is reckonable as pensionable service, was part-time service, the amount of special allowance shall be calculated using the formula in paragraph 2 of Part 2 of Schedule 1 to Part 2.

(2) In making the calculation mentioned in sub-paragraph (1), for the value of A there shall be substituted "A is the amount calculated under paragraphs 1 to 3 of Part 1 of Schedule 3 to

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Part 4 if the average pensionable pay was the pay the deceased would have received had the deceased been a whole-time employee of a fire and rescue authority”.

## PART 2

### REDUCTION IN CHILD'S ALLOWANCE DURING FULL-TIME REMUNERATED TRAINING

1.—(1) This Part applies where a child entitled to an allowance under rule 1 of Part 4 (“the relevant allowance”)—

- (a) is undergoing full-time vocational training; and
- (b) is receiving in respect of that training remuneration at an annual rate which exceeds the rate specified in paragraph 3(1) (“the specified rate”).

2.—(1) Where this Part applies—

- (a) if the amount by which the annual rate of the remuneration exceeds the specified rate (“the excess remuneration”) is the same as or larger than the effective amount of the relevant allowance, the allowance shall not be paid; and
- (b) in any other case, the amount of the relevant allowance shall be reduced by that of the excess remuneration.

(2) Where other children are also entitled to allowances and one of the relevant provisions, that is to say paragraph 2(b) and 3(b) of Part 2 of Schedule 4 to the Pensions Scheme and paragraphs 2(b) and 3(b) of Part 1 of this Schedule, applies—

- (a) where sub-paragraph (1)(a) above applies, each of the other allowances shall be recalculated as if there were no entitlement to the relevant allowance; and
- (b) where sub-paragraph (1)(b) above applies, each of the other allowances shall be increased by the amount of the excess remuneration divided by the number of those allowances.

(3) Notwithstanding anything in sub-paragraph (2)—

- (a) no child shall by virtue of that sub-paragraph receive an allowance greater than that to which the child would be entitled if no relevant provision applied in the child’s case; and
- (b) the total of the effective amounts of the allowances to be paid under a relevant provision shall not by virtue of that sub-paragraph exceed what would otherwise have been payable under the relevant provision.

3.—(1) The specified rate is the annual rate (rounded up to the nearest £1) at which an official pension, within the meaning of the Pensions (Increase) Act 1971(25) (“the 1971 Act”), would for the time being be payable if it had begun, and first qualified for increases under the 1971 Act, on 1st June 1972 and had then been payable at an annual rate of £250.

(2) The effective amount of an allowance is its amount together with that of any increase in it under the 1971 Act.

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(25) 1971 c. 56.



SCHEDULE 4 to PART 5

Part 5

AWARDS ON DEATH: ADDITIONAL PROVISIONS

PART 1

ADULT DEPENDENT RELATIVE'S SPECIAL PENSION

1. Subject to paragraphs 2 and 3, the amount of the pension—
  - (a) while a surviving spouse or civil partner is alive, is 20%; and
  - (b) in any other case, is 45%,of the deceased's average pensionable pay.
- 2.—(1) For any week for which the total of—
  - (a) any spouse's or civil partner's special pension; and
  - (b) any child's special allowance,equals or exceeds the amount of the deceased's average pensionable pay for a week, no dependent relative's special pension is payable.
- (2) For any week for which the total of the special pension and—
  - (a) any surviving spouse's or civil partner's special pension; and
  - (b) any child's special allowances,would exceed the amount of the deceased's average pensionable pay for a week, the dependent relative's special pension shall be reduced so that the total does not exceed that amount.
3. Where some or all of the deceased's service, which is reckonable as pensionable service, was part-time service, the amount of the deceased's average pensionable pay shall be calculated using the formula in paragraph 2 of Part 2 of Schedule 2 to Part 3.

PART 2

GRATUITY IN LIEU OF CHILD'S ALLOWANCE

1. The amount of the gratuity is such amount, not exceeding the permitted amount, as may be agreed between the fire and rescue authority and—
  - (a) a surviving parent or the child's guardian; or
  - (b) if the child has neither, the child himself.
2. The permitted amount is the capitalised value of the amount commuted under rule 3 of Part 5, calculated in accordance with tables prepared from time to time by the Government Actuary.

SCHEDULE 5 to PART 6

Part 6

APPEALS

APPEAL TO BOARD OF MEDICAL REFEREES

**1.—**(1) Subject to sub-paragraph (2), written notice of appeal against an opinion of the kind mentioned in rule 1(2) of Part 6 stating—

- (a) the grounds of the appeal; and
- (b) the appellant's name and address,

must be given to the fire and rescue authority within 14 days of the date on which the appellant is supplied by them with a copy of the opinion.

(2) Where—

- (a) notice of appeal is not given within the period specified in sub-paragraph (1); but
- (b) the fire and rescue authority are of the opinion that the person's failure to give it within that period was not due to that person's own default,

they may extend the period for giving notice to such length, not exceeding six months from the date mentioned in sub-paragraph (1), as they think fit.

**2.—**(1) On receiving a notice of appeal the fire and rescue authority shall supply the Scottish Ministers with two copies of the notice and two copies of the opinion.

(2) The Scottish Ministers shall refer an appeal to a board of medical referees ("the board") and shall supply them with a copy of the notice and a copy of the opinion.

**3.—**(1) The board shall consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the Scottish Ministers.

(2) One member of the board shall be a specialist in a medical condition relevant to the appeal.

(3) One member of the board shall be appointed as chairman.

(4) Where there is an equality of voting among the members of the board, the chairman shall have a second or casting vote.

**4.** The board shall secure that the appellant and the fire and rescue authority ("the parties") have been informed—

- (a) that the appeal is to be determined by it; and
- (b) of an address to which communications relating to the appeal may be delivered to the board.

**5.—**(1) Subject to sub-paragraph (4), the board—

- (a) shall interview and medically examine the appellant at least once; and
- (b) may interview or medically examine the appellant or cause the appellant to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of deciding the appeal.

(2) The board shall appoint, and give the appellant and the fire and rescue authority not less than 21 days' notice of, the time and place for every interview and medical examination; if the board is satisfied that the appellant is unable to travel, the place shall be the appellant's place of residence.

(3) The appellant shall attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.

(4) If—

- (a) the appellant fails to comply with sub-paragraph (3); and
- (b) the board is not satisfied that there was reasonable cause for the failure,

the board may dispense with the interview required by paragraph (1)(a) or, as the case may be, with any further interview, and may decide the appeal on such information as is then available.

(5) Any interview under this paragraph may be attended by persons appointed for the purpose by the fire and rescue authority or by the appellant or by each of them.

**6.—**(1) Where either party to the appeal intends to submit written evidence or a written statement at an interview held under paragraph 5, the party shall, subject to sub-paragraph (2), submit it to the board and to the other party not less than seven days before the date appointed for the interview.

(2) Where any written evidence or statement has been submitted under sub-paragraph (1) less than nine days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first-mentioned evidence or statement at any time up to, and including, that date.

(3) Where any written evidence or statement is submitted in contravention of sub-paragraph (1), the board may postpone the date appointed for the interview and require the party who submitted the evidence or statement to pay such reasonable costs of the board and of the other party as arise from the adjournment.

**7.** The board shall supply the Scottish Ministers with a written report of its decision on the relevant medical issues and the Scottish Ministers shall supply a copy of the report to the appellant and to the fire and rescue authority.

**8.—**(1) There shall be paid to the board—

- (a) such fees as are determined in accordance with arrangements made by the Scottish Ministers; or
- (b) where no such arrangements have been made, such fees and allowances as the Scottish Ministers may from time to time determine.

(2) Any fees and allowances payable to the board under sub-paragraph (1) shall—

- (a) be paid by the fire and rescue authority; and
- (b) be treated for the purposes of paragraph 9 as part of the fire and rescue authority's expenses.

**9.—**(1) Subject to paragraph 6(3) and sub-paragraphs (2) to (5) below, the expenses of each party to the appeal shall be borne by that party.

(2) Where the board—

- (a) decides in favour of the fire and rescue authority; and
- (b) reports that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded,

the fire and rescue authority may require the appellant to pay them such sum not exceeding the amount of the fees and allowances payable to the member of the board appointed under paragraph 3(2), as they think fit.

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(3) Where the appellant gives notice to the board of withdrawing the appeal within a period of 21 working days prior to the date appointed for an interview or medical examination by the board under paragraph 5(2), the fire and rescue authority may require the appellant to pay such sum as they think fit, not exceeding the board's total fees and allowances under paragraph 8(1).

(4) Where the board—

- (a) decides in favour of the appellant; and
- (b) does not otherwise direct,

the fire and rescue authority shall refund to the appellant the amount specified in sub-paragraph (5).

(5) The amount is the total of—

- (a) any personal expenses actually and reasonably incurred by the appellant in respect of any interview under paragraph 5; and
- (b) if any such interview was attended by a qualified medical practitioner appointed by the appellant, any fees and expenses reasonably paid by the appellant in respect of such attendance.

(6) For the purposes of sub-paragraphs (2) and (4) any question arising as to whether the board's decision is in favour of the fire and rescue authority or of the appellant shall be decided by the board, or in default by the Scottish Ministers.

**10.** Any notice, information or document which an appellant is entitled to receive for the purposes of this Part shall be deemed to have been received by the appellant if it was duly posted in a letter addressed to the appellant at the appellant's last known place of residence.

## SCHEDULE 6 to PART 7

Part 7

### SERVICEMEN: INCREASED AWARDS

**1.** The total of—

- (a) the amount of a pension as increased under rule 2(3)(b) of Part 7; and
- (b) the amount of any service pension other than an allowance for constant attendance, wear and tear of clothing, or comforts,

must not exceed the amount of the injury pension to which the serviceman would have been entitled if rule 1 of Part 2 had applied.

**2.** The total of—

- (a) the amount of a pension as increased under rule 3(2)(b) of Part 7; and
- (b) the amount of any service pension payable to the spouse or civil partner in respect of the serviceman,

must not exceed the amount of the special pension to which the spouse or civil partner would have been entitled if rule 1 of Part 3 had applied.

**3.** The total of—

- (a) the amount of a child's allowance as increased under rule 3(3)(b) of Part 7; and
- (b) the amount of any service pension payable to or for the child in respect of the serviceman,

must not exceed the amount of the special allowance to which the child would have been entitled if rule 1 of Part 4 had applied.”

## SCHEDULE 2

Article 2(2)

CORRESPONDING PROVISIONS OF THE PENSION  
SCHEME AND THE COMPENSATION SCHEME

<i>(1)</i> <i>Corresponding provision of Pension Scheme</i>	<i>(2)</i> <i>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 E8 (increase of pensions and allowances during first 13 weeks)	In Part 5 rule 5
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

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

This Order provides for a new compensation scheme for firefighters in Scotland. The new scheme is set out in Schedule 1 to the Order and, with the exception of provisions relating to rule 3 of Part 2 which have effect from 1st April 2000, the new scheme shall have effect from 6th April 2006. The power to give retrospective effect is conferred by Section 34(3) of the Fire and Rescue Services Act.

Subject to the transitional provisions in articles 3 to 4 of the Order, the new Scheme supersedes the corresponding provisions of the Firefighters' Pension Scheme (set out in Schedule 2 to the Firemen's Pension Scheme Order 1992 (S.I. 1992/129) ("the Pension Scheme"). Those corresponding provisions are listed in Schedule 2 to this Order.

The new scheme consists primarily of provisions relating to ill-health and injury awards in respect of firefighters, their spouses, civil partners, children and other dependants, that are similar to those contained in, but to be removed from, the Pension Scheme.

The new scheme also includes (in rule 3 of Part 2) provisions based on those that previously formed part of the conditions of service applicable to firefighters. The provisions relate to the payment of compensation in respect of firefighters who die or sustain seriously disabling injuries while on duty.

Article 3 of the Order enables a person whose position under the new scheme would be less favourable than that under the Pension Scheme to elect to retain benefits under the Pension Scheme. Notice of election has to be given to the fire and rescue authority before 30th September 2006.