

SCHEDULE 1

THE NEW FIREFIGHTERS' PENSION SCHEME (SCOTLAND)

PART 1

CITATION AND INTERPRETATION

Citation

1. This Scheme (which, by virtue of article 1(1) of the Firefighters' Pension Scheme (Scotland) Order 2007 has effect from 6th April 2006) may be cited as the New Firefighters' Pension Scheme (Scotland).

Interpretation

2.—(1) In this Scheme—

“the 1992 Scheme” means the Firefighters' Pension Scheme 1992(1);

“the 1993 Act” means the Pension Schemes Act 1993(2);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999(3);

“adoption leave” means leave under sections 75A and 75B of the Employment Rights Act 1996(4); and “ordinary adoption leave” and “additional adoption leave” shall be construed accordingly;

“amount”, in relation to a pension, means the annual amount of the pension;

“authority”, except in the definition of “independent qualified medical practitioner” and rule 12 of Part 12, means a Scottish fire authority;

“authority-initiated early retirement” means retirement before normal retirement age under rule 6 of Part 3;

“award”, unless a contrary indication appears, means a pension or lump sum under this Scheme, or the refund of pension contributions;

“cash equivalent” has the meaning given by section 94(1)(a) of the 1993 Act;

“child”, in relation to a scheme member, means—

(a) a child who is financially dependent on the scheme member, and is—

(i) a natural child, step-child or adopted child of the scheme member;

(ii) otherwise related to the scheme member; or

(iii) the child of the scheme member’s spouse, civil partner or nominated partner; or

(b) any child of the scheme member—

(i) who is born after the scheme member’s death; and

(ii) with whom the child’s mother was pregnant at the date of the scheme member’s death;

(1) See S.I.1992/129, to which there are amendments not relevant to this Order. The Scheme was made under section 26 of the Fire Services Act 1947 (c. 41) (“the 1947 Act”). It was renamed the Firefighters' Pension Scheme, and continued in force, on the repeal of the 1947 Act by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004, by article 3 of the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306).

(2) 1993 c. 48.

(3) 1999 c. 30.

(4) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

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“Compensation Scheme” means the Firefighters' Compensation (Scotland) Scheme 2006 set out in Schedule 1 to the Firefighters' Compensation (Scotland) Order 2006⁽⁵⁾;

“contracted-out”, in relation to an employment or scheme, has the meaning given by section 8(1) of the 1993 Act;

“contributions equivalent premium” has the meaning given by section 55(2) of the 1993 Act; and any reference to a case in which a contributions equivalent premium has been paid includes a reference to a case in which such a premium is payable;

“contributions election” means an election under rule 5(1) of Part 2 not to make pension contributions;

“deferred member” has the meaning given by rule 1(3) of Part 2;

“disabled” and “disablement” have the meanings given by rule 3 of this Part;

“eligibility condition” means a condition set out in rule 2(1) of Part 2;

“final pensionable pay” shall be construed in accordance with rule 2 of Chapter 1 of Part 11;

“firefighter member” has the meaning given by rule 1(1) of Part 2;

“guaranteed minimum” is the amount determined for the purposes of sections 13 to 17 of the 1993 Act⁽⁶⁾, and “guaranteed minimum pension” has the same meaning as in that Act; and any reference to the guaranteed minimum in relation to a pension under a pension scheme at a particular time is a reference to the amount certified by the Secretary of State as that minimum at that time;

“higher tier ill-health pension” means a pension of the description referred to in rule 2(3) of Part 3;

“ill-health retirement” means retirement under rule 2 of Part 3;

“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⁽⁷⁾ 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⁽⁸⁾;

“injury” means any injury or disease, whether of body or mind;

“lower tier ill-health pension” means a pension of the description referred to in rule 2(2) of Part 3;

“maternity leave” means leave under sections 71 and 73 of the Employment Rights Act 1996⁽⁹⁾; and “ordinary maternity leave” and “additional maternity leave” shall be construed accordingly;

“member-initiated early retirement” means retirement before normal retirement age under rule 5 of Part 3;

“nominated partner” has the meaning given by rule 1(6) of Part 2;

“normal benefit age” has the meaning given by rule 3(2) of Part 2;

“normal retirement age” has the meaning given by rule 3(1) of Part 2;

(5) S.S.I. 2006/338.

(6) 1993 c. 48. As to “guaranteed minimum pension” see section 8(2).

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

(8) S.I. 2003/1250, to which there is an amendment not relevant to this Order.

(9) 1996 c. 18; sections 71 and 73 were substituted by section 7 of, and Part 1 of Schedule 4 to, the Employment Relations Act 1999 (c. 26) and amended by section 17 of the Employment Act 2002 (c. 22).

“paternity leave” means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002⁽¹⁰⁾;

“pension”, unless a contrary intention appears, means a pension under this Scheme;

“pensionable pay” shall be construed in accordance with rule 1 of Part 11;

“pensionable retained or volunteer service”, in relation to a retained or volunteer firefighter and any period, means the same proportion of whole-time service as that which the retained or volunteer firefighter’s actual pensionable pay for that period bears to the retained or volunteer firefighter’s reference pay for that period;

“pensionable service” shall be construed in accordance with rules 2 to 5 of Part 10;

“pensioner”, except in the definition of “pensioner member”, means a person who is in receipt of a pension;

“pensioner member” has the meaning given by rule 1(4) of Part 2;

“pension credit” means a credit under section 29(1)(b) of the 1999 Act, or corresponding Northern Ireland legislation;

“pension credit benefit” has the meaning given by section 101B of the 1993 Act⁽¹¹⁾;

“pension credit member” has the meaning given by section 124(1) of the Pensions Act 1995⁽¹²⁾;

“pension credit rights” has the meaning given by section 101B of the 1993 Act;

“pension debit” means a debit under section 29(1)(a) of the 1999 Act;

“pension debit member” means a person whose benefits or future benefits under this Scheme have been reduced under section 31 of the 1999 Act;

“pension sharing order” means an order or provision mentioned in section 28(1) of the 1999 Act;

“personal pension scheme” has the meaning given by section 1 of the 1993 Act;

“qualifying service” has the meaning given by rule 1 of Part 10;

“reference pay”, in relation to the pay of a retained or volunteer firefighter for any period, means the whole-time equivalent pay for that period of a regular firefighter employed in a similar role and with equivalent qualifying service;

“regular employment” means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person’s capacity for employment arises;

“regular firefighter” means a person employed (whether whole-time or part-time) by an authority—

- (a) as a firefighter, but not as a retained or volunteer firefighter;
- (b) on terms under which the 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 the person’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting); and
- (c) otherwise than in a temporary capacity;

“retained firefighter” and “volunteer firefighter” mean a person employed by an authority—

- (a) as a firefighter, but not as a regular firefighter;

⁽¹⁰⁾ S.I. 2002/2788.

⁽¹¹⁾ Section 101B was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽¹²⁾ 1995 c. 26.

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- (b) on terms under which the 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 the person's role as a firefighter (whether instead of, or in addition to, engaging in fire fighting);
- (c) otherwise than in a temporary capacity; and
- (d) who is obliged to attend at such times as the officer in charge considers necessary and in accordance with the orders that the person receives,

and "retained or volunteer firefighter" shall be construed accordingly;

"role", in relation to a firefighter, except in rule 1(1) of Part 2 means the role in which the firefighter is for the time being employed, being a role set out in "Fire and Rescue Services Rolemaps" issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005⁽¹³⁾;

"the Scheme Actuary" means the actuary for the time being appointed by the Scottish Ministers to provide a consulting service on actuarial matters relevant to this Scheme;

"scheme member" means a member of the Scheme as referred to in rule 1 of Part 2;

"serviceman" means a person who, immediately before undertaking relevant service in the armed forces, was a regular firefighter;

"state pensionable age" means pensionable age as determined in accordance with the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995⁽¹⁴⁾;

"survivor's pension" means a pension under rule 1 of Part 4; and

"transfer value payment" means a payment to another pension scheme or arrangement in respect of rights to benefits that have accrued to or in respect of a person under this Scheme.

(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.

Disablement

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

(2) Disablement—

- (a) in relation to a firefighter member, means such incapacity, occasioned by infirmity of mind or body, as makes the firefighter member unable to perform any duties of the role in which the firefighter member was last employed; or
- (b) in relation to a child, means such incapacity, occasioned by infirmity of mind or body, as makes the child unable to earn a living.

(3) In determining whether a person's disablement is permanent, the authority shall have regard—

- (a) in every case, to whether the disablement will continue until the person's normal retirement age; and
- (b) in relation to a person who has taken a deferred pension, to whether the disablement will continue until the person's normal benefit age.

(4) Where—

⁽¹³⁾ The document is accessible at <http://www.lge.gov.uk/lge/core/page.do?pageld=58940>.

⁽¹⁴⁾ 1995 c. 26. See section 126 of that Act.

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- (a) a person has left the Scheme with deferred entitlement to benefits before becoming disabled; and
 - (b) the date on which the person becomes disabled cannot be ascertained,
- the date shall be taken to be that on which the claim that the person is disabled is first made known to the authority.