

## SCHEDULE 1

### THE NEW FIREFIGHTERS' PENSION SCHEME (SCOTLAND)

#### PART 4

#### SURVIVORS' PENSIONS

##### CHAPTER 1

##### SURVIVING SPOUSES, CIVIL PARTNERS AND NOMINATED PARTNERS

###### **Pensions for surviving spouses, civil partners and nominated partners**

1.—(1) Subject to the following provisions of this rule, a pension is payable on the death of—

- (a) a firefighter member who satisfies an eligibility condition and dies while employed by an authority; or
- (b) a former firefighter member who—
  - (i) has been awarded a deferred pension under rule 3 of Part 3 which has not come into payment; or
  - (ii) is in receipt of a deferred pension under that rule; or
  - (iii) is in receipt of a pension under any of rules 1, 2, 5 and 6 of Part 3,

to the deceased's spouse, civil partner or nominated partner for the remainder of their life (a "survivor's pension").

(2) A survivor's pension is not payable if the deceased's spouse, civil partner or nominated partner (as the case may be) is convicted of the murder of the deceased; but this is subject to paragraph (4).

(3) Subject to paragraph (5), where the deceased's spouse, civil partner or nominated partner (as the case may be) is convicted of the culpable homicide or manslaughter of the deceased, the authority may, as they think fit, withhold the survivor's pension—

- (a) in whole or in part; and
- (b) permanently or temporarily.

(4) Where a conviction of the description mentioned in paragraph (2) is quashed on appeal—

- (a) a survivor's pension shall be payable from the day after that on which the deceased died; and
- (b) the authority shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of pension accrued.

(5) Where—

- (a) a conviction of the description mentioned in paragraph (3) is quashed on appeal; and
- (b) the authority have withheld any part of the survivor's pension,

the authority's decision under paragraph (3) shall be treated as revoked and they shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of pension accrued from the day after that on which the deceased died.

(6) Nothing in paragraph (4) or (5) shall affect the application of paragraph (2) or (3) if the person whose conviction is quashed is subsequently convicted of the murder, culpable homicide or manslaughter of the deceased.

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**Amount of survivor’s pension: general**

- 2.—(1) Subject to rule 3 of this Part, the amount of a survivor’s pension—
- (a) in respect of a firefighter member who satisfies an eligibility condition and dies while employed by an authority, is half of the higher tier ill-health pension to which the firefighter member would have been entitled under rule 2(3) of Part 3 had the firefighter member retired with the benefit of an ill-health award;
  - (b) in any other case, subject to paragraphs (2) and (3), is half of the pension to which the deceased was entitled.
- (2) Where a portion of the deceased’s pension had been commuted under rule 9 of Part 3, the amount of the survivor’s pension is half of the deceased’s pension after commutation.
- (3) Where the deceased had taken member-initiated early retirement, the amount of the survivor’s pension is—
- (a) half of the amount of the pension which the deceased would have received if there had been no actuarial reduction; or
  - (b) where a portion of the deceased’s pension had been commuted, the amount found by dividing by 2 the product of A and B, where—
    - A is the amount which the deceased would have received if there had been no actuarial reduction; and
    - B is the fraction which represents the uncommuted portion of A expressed as a fraction of A.

**Amount of survivor’s pension: special cases**

- 3.—(1) Subject to paragraph (2), where the person entitled to a survivor’s pension under rule 1 of this Part is more than twelve years younger than the deceased on the day on which the deceased dies, a reduction of 2.5 per cent for each year by which the survivor’s age exceeds, by more than twelve years, that of the deceased, shall be applied to the rule 2 amount.
- (2) Where the application of paragraph (1) would result in the payment of a survivor’s pension of less than 50 per cent of the rule 2 amount, the survivor’s pension shall be 50 per cent of the rule 2 amount.
- (3) Where—
- (a) a pension debit member satisfies an eligibility condition and dies while employed by an authority;
  - (b) a survivor’s pension is payable under rule 1 of this Part on the pension debit member’s death; and
  - (c) a pension sharing order or, in the case of a surviving civil partner, an order to similar effect, had effect on the day on which the pension debit member died,
- the amount of the survivor’s pension shall be ascertained with regard to the terms of that order.
- (4) In paragraphs (1) and (2), “the rule 2 amount” means the amount that would have been ascertained in accordance with rule 2 of this Part if that rule were not subject to paragraphs (1) to (3) of this rule.
- (5) For the purposes of paragraph (1), a part of a year shall be treated as a whole year.

#### **Bereavement pension: survivors**

4.—(1) Subject to paragraph (2), a person entitled to a survivor's pension under rule 1 of this Part is also entitled, in respect of each of the 13 weeks following the death, to a bereavement pension of an amount equal to the difference between the weekly rate at which the survivor's pension is paid and—

- (a) if the deceased was a firefighter member when the deceased died, the weekly rate of the firefighter member's pensionable pay when the firefighter member died;
- (b) in any other case, the weekly rate of the deceased's pension or pensions (including any increase under the Pensions (Increase) Act 1971) when the deceased died.

(2) No entitlement arises under paragraph (1) where—

- (a) a contributions election has effect at the date of the deceased's death; or
- (b) the deceased was entitled to a deferred pension that had not come into payment.

#### **Commutation of pensions for surviving spouses, civil partners and nominated partner**

5.—(1) A pension payable under this Chapter may, if the person entitled to it so requests, be commuted for a lump sum if, after commutation, the lump sum would be a trivial commutation lump sum death benefit within the meaning of paragraph 20 of Schedule 29 to the Finance Act 2004.

(2) The amount of the lump sum shall be calculated in accordance with tables prepared by the Scheme Actuary and in force when the commutation takes effect.

(3) On the day on which a pension is commuted under this rule, all other entitlements under this Scheme of the person entitled to the pension are extinguished to the extent that they derive from the deceased member.

## CHAPTER 2

### CHILDREN'S PENSIONS

#### **Child's pension**

6. Subject to rule 7 of this Part, a child is eligible for a child's pension if that child is the child of—

- (a) a firefighter member who satisfies one of the eligibility conditions and dies while employed by an authority; or
- (b) a pensioner member who is in receipt of a pension under this Scheme when the pensioner member dies; or
- (c) a deferred member who is entitled to a deferred pension under this Scheme which is not in payment when the deferred member dies.

#### **Child's pension: limitations and duration**

7.—(1) Subject to paragraphs (2) and (3), a child is not eligible if the child—

- (a) is aged 18 or older; or
- (b) has ceased full-time education and is in paid employment; or
- (c) is married or has entered into a civil partnership.

(2) A child aged 18 but not more than 23 is eligible if the child is in full-time education or attending a course of at least one year's duration.

(3) A child aged 18 or more is eligible if, when the deceased dies, the child is dependent on the deceased by reason of permanent disablement.

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(4) A child is not eligible if the child is convicted of the murder of the deceased, but this is subject to paragraph (6).

(5) Subject to paragraph (7), where the child is convicted of the culpable homicide or manslaughter of the deceased, the authority may, as they think fit, withhold the child's pension—

- (a) in whole or in part; and
- (b) permanently or temporarily.

(6) Where a conviction of the description mentioned in paragraph (4) is quashed on appeal—

- (a) a child's pension shall be payable from the day after that on which the deceased died; and
- (b) the authority shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of pension accrued.

(7) Where—

- (a) a conviction of the description mentioned in paragraph (5) is quashed on appeal; and
- (b) the authority have withheld any part of the child's pension,

the authority's decision under paragraph (5) shall be treated as revoked and they shall, as soon as reasonably practicable after the conviction is quashed, pay the arrears of pension accrued from the day after that on which the deceased died.

(8) Nothing in paragraph (6) or (7) shall affect the application of paragraph (4) or (5) if the child whose conviction is quashed is subsequently convicted of the murder, culpable homicide or manslaughter of the deceased.

(9) A child's pension ceases to be payable—

- (a) unless paragraph (2) or (3) applies, on the child's 18th birthday or on the occurrence of an event referred to in paragraph (1)(b) or (c), whichever first occurs; or
- (b) where paragraph (2) applies, on the child's 23rd birthday or the day on which the child's full-time education or course ceases, whichever first occurs; or
- (c) where paragraph (3) applies, when the authority are satisfied—
  - (i) that the child is no longer permanently disabled; or
  - (ii) that the child's pension should not have been awarded.

(10) Unless paragraph (9)(c) applies, a pension for which a child is eligible as mentioned in paragraph (3) is payable for life.

### **Amount of child's pension**

**8.—**(1) The amount payable by way of a child's pension under this Chapter is—

- (a) where the deceased died while employed as a firefighter member and there is one eligible child, one quarter of the ill-health pension to which the member would have been entitled under rule 2 of Part 3 had the member retired with the benefit of a higher tier ill health award on the day after that on which the member died; or
- (b) where the deceased died while employed by an authority as a firefighter member and there is more than one eligible child, one half of the ill-health pension to which the member would have been entitled under rule 2 of Part 3 had the member retired with the benefit of a higher tier ill health award on the day after that on which the member died, divided by the number of eligible children; or
- (c) in any other case, subject to paragraphs (2) and (3)—
  - (i) if there is one eligible child, one quarter of the pension to which the deceased was entitled on the day the deceased died (whether or not, in the case of a deferred pension, the pension had come into payment); or

(ii) if there is more than one eligible child, one half of the pension to which the deceased was entitled on the day the deceased died (whether or not, in the case of a deferred pension, the pension had come into payment) divided by the number of eligible children.

(2) Where a portion of the deceased's pension had been commuted under rule 9 of Part 3, the amount is—

- (a) if there is one eligible child, one quarter of the uncommuted portion; or
- (b) if there is more than one eligible child, one half of the uncommuted portion, divided by the number of eligible children.

(3) Where the deceased had taken member-initiated early retirement, the amount is—

- (a) if there is one eligible child, one quarter of the amount of the pension which the deceased would have received if there had been no actuarial reduction; or
- (b) if there is more than one eligible child, one half of the amount of the pension which the deceased would have received if there had been no actuarial reduction, divided by the number of eligible children; or
- (c) where a portion of the deceased's pension had been commuted, and there is one eligible child, the amount found by dividing by 4 the product of A and B; or
- (d) where a portion of the deceased's pension had been commuted, and there is more than one eligible child, the amount found by dividing the product of A and B by 2 and then dividing the resultant amount by the number of eligible children.

(4) In paragraphs (3)(c) and (d)—

A is the amount which the deceased would have received if there had been no actuarial reduction; and

B is the fraction which represents the uncommuted portion of A expressed as a fraction of A.

### **Bereavement pension: children**

9.—(1) Where—

- (a) no person is entitled to a survivor's pension under rule 1 of this Part; and
- (b) a child of the deceased is eligible for a child's pension ("eligible child"),

the authority shall, subject to paragraph (3), pay to the eligible child the amount referred to in paragraph (2) in respect of each of the 13 weeks following the deceased's death or, if shorter, each complete week of the period beginning on the day after the deceased's death and ending on the day on which the child's pension ceases to be payable.

(2) The amount is equal to that which the authority would have paid under paragraph (1) of rule 4 of this Part (bereavement pension: survivors) had a survivor's pension been payable.

(3) Where there is more than one eligible child, the amount ascertained in accordance with paragraph (2) shall be divided equally between the eligible children; but—

- (a) a child's share shall cease to be paid to the child as soon as that child's pension ceases to be payable; and
- (b) the share to which the child would otherwise have been entitled shall be distributed equally among any remaining eligible children.

(4) Where a person in receipt of a survivor's bereavement pension dies before the end of the period for which that pension is payable ("the 13 week period"), the authority shall, subject to paragraph (6), pay to the eligible child (if any) a bereavement pension, in respect of each complete week of whichever is the shorter of—

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- (a) the period beginning on the day after the survivor's death and ending at the end of the 13 week period; and
- (b) the period beginning on the day after the survivor's death and ending on the day on which the child's pension ceases to be payable.

(5) The amount of a bereavement pension under paragraph (4) is equal to that which the authority would have paid under paragraph (1) of rule 4 of this Part had a survivor's bereavement pension been payable for the part of the 13 week period that falls after the survivor's death.

(6) Where there is more than one eligible child, the amount ascertained in accordance with paragraph (5) shall be divided equally between the eligible children; but—

- (a) a child's share shall cease to be paid to the child as soon as that child's pension ceases to be payable; and
- (b) the share to which the child would otherwise have been entitled shall be distributed equally among any remaining eligible children.

#### **Pension for child where no survivor's pension paid**

**10.**—(1) Where—

- (a) no person is entitled to a pension under rule 1 of this Part as a survivor of the deceased; and
- (b) a child of the deceased is eligible for a child's pension under rule 6 of this Part,

the authority shall pay to the child, for so long as that child is an eligible child, the amount that would have been paid by way of survivor's pension under rule 2 of this Part if, in paragraph (1) of that rule, the words "Subject to rule 3" had been omitted.

(2) Where there is more than one eligible child, the amount referred to in paragraph (1) shall be divided equally between the eligible children; but—

- (a) a child's share shall cease to be paid as soon as that child's pension ceases to be payable; and
- (b) the share to which the child would otherwise have been entitled shall be distributed equally among any remaining eligible children.

#### **Child's pension in respect of pension debit member**

**11.** Where a pension debit member dies leaving a child, the reduction in the pension debit member's rights under this Scheme by virtue of section 31 of the 1999 Act shall be disregarded for the purposes of calculating any pension payable under this Chapter.

#### **Commutation of child's pension**

**12.**—(1) A pension payable under this Chapter may be commuted for a lump sum—

- (a) with the consent of the child's remaining parent or, if the child has none, the child's guardian or, if the child has none, the child itself if the child is over age 18; and
- (b) if, when commuted, the lump sum would be a trivial commutation lump sum death benefit within the meaning of paragraph 20 of Schedule 29 to the Finance Act 2004.

(2) The amount of the lump sum shall be calculated in accordance with tables prepared by the Scheme Actuary and in force when the commutation takes effect.

(3) On the day on which a pension is commuted under this rule, all other entitlements of the child under this Scheme are extinguished to the extent that they derive from the deceased member.