
WELSH STATUTORY INSTRUMENTS

2007 No. 1073 (W.111)

**FIRE AND RESCUE SERVICES, WALES
PENSIONS, WALES**

The Firefighters' Compensation Scheme (Wales) Order 2007

Made - - - - 28 March 2007

Coming into force - - 29 March 2007

The National Assembly for Wales in exercise of the powers conferred upon it by sections 34, 60 and 62 of the Fire and Rescue Services Act 2004(1) and having consulted such persons as it considers appropriate in accordance with section 34(5) of that Act hereby makes the following Order:

Title, commencement, application and interpretation

1.—(1) The title of this Order is the Firefighters' Compensation Scheme (Wales) Order 2007 and it comes into force on 29 March 2007; 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, has effect from 1 April 2000; and
- (b) the remainder of the Compensation Scheme has effect from 1 April 2006.

(2) This Order applies in relation to Wales.

(3) In this Order—

“the Compensation Scheme” means the Firefighters' Compensation Scheme (Wales) 2007, 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).

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

(1) 2004 c. 21.

(2) S.I. 1992/129. 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 That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21).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 Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004 (S.I. 2004/2918). The name of the scheme was changed to the Firefighters' Pension (Wales) Scheme, by article 4(1) of that Order.

permanently disabled as the result of an injury sustained or disease contracted while employed by a fire and rescue authority) has effect; and the corresponding provisions of the Pension Scheme cease to have effect.

(2) 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 older 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 he would have been in if the old provision had continued to have effect,

he 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 it had re-enacted the old provision without modification.

(2) Notice under paragraph (1) must be given not later than 28 June 2007.

(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 1 April 2006, ceased to be a member of the fire and rescue service, or died.

Transitional provision: decisions and determinations made before 1 April 2006

4.—(1) With the exception of rule 3 of Part 2, the Compensation Scheme does 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 1 April 2006.

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

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(3)

28 March 2007

D. Elis-Thomas
The Presiding Officer of the National Assembly

SCHEDULE 1

Article 2

The Firefighters' Compensation Scheme (Wales) 2007

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
Rules L4A and L4B (prevention of duplication)	In Part 10, rules 4 and 5
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
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<i>(1)</i>	<i>(2)</i>
<i>Corresponding provision of Pension Scheme</i>	<i>Provision of Compensation Scheme</i>
In Schedule 5, Part I ((adult dependentrelative’s special pension)	Schedule 4
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Explanatory Note

PART 1

GENERAL PROVISIONS

Title and commencement

- 1.—(1) The title of this Scheme is the Firefighters' Compensation Scheme (Wales) 2007.
- (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 1 April 2006.
- (3) Rule 3 of Part 2 has effect from 1 April 2000.

Interpretation

- 2.—(1) In this Scheme—
 - “the 2004 Act” means the Fire and Rescue Services Act 2004⁽⁴⁾;
 - “amount”, in relation to a pension or allowance, means its annual amount;
 - “the 1992 Scheme” means the Firefighter’s Pension Scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992⁽⁵⁾;

(4) 2004 c. 21.

(5) S.I. 1992/129, amended, as to Wales, by S.I. 1997/2309 and 2851, 1998/1010, 2005/1672, 2005/2929 and 2006/1672 by S.I. 2001/3649, 2004/1912. There are other amendments not relevant to this Order. 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 Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme)

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“the 2007 Scheme” means the New Firefighters' Pension Scheme (Wales), set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007⁽⁶⁾;

“average pensionable pay” has the same meaning as in the 1992 Scheme⁽⁷⁾;

“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 his, and
- (b) any other child who was substantially dependent on him and either is related to him or is the child of his 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;

“final pensionable pay” shall be construed in accordance with rule 2 of Chapter 1 of Part 11 of the 2007 Scheme;

“fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004⁽⁸⁾;

“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⁽⁹⁾ or an equivalent institution of an EEA State; and for the purposes of this definition “competent authority” has the same meaning as in the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003⁽¹⁰⁾;

“injury” includes disease;

“normal benefit age” has the meaning given by rule 3(2) of Part 2 of the 2007 Scheme;

“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;

“pensionable pay” —

- (a) in relation to the 1992 Scheme, shall be construed in accordance with rule G1 of that Scheme
- (b) in relation to the 2007 Scheme, shall be construed in accordance with rule 1 of Part 11 of that Scheme;

“pensionable retained service”, in relation to a retained or volunteer firefighter, means the same proportion of whole-time service as that which his actual annual pensionable pay bears to his reference pay;

“pensionable service” —

- (a) in relation to the 1992 Scheme, shall be construed in accordance with rule F1 of that Scheme;

(Wales) Order 2004 (S.I. 2004/2918). The name of the scheme was changed to the Firefighters' Pension (Wales) Scheme, by article 4(1) of that Order.

⁽⁶⁾ S.I. 2007/1072 (W.110).

⁽⁷⁾ See rule G1.

⁽⁸⁾ 2004 c. 21; see section 1 of the Act.

⁽⁹⁾ The Faculty of Occupational Medicine is a registered charity no. 1035415.

⁽¹⁰⁾ S.I. 2003/1250; the definition of “competent authority” is in Schedule 1.

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(b) in relation to the 2007 Scheme, shall be construed in accordance with rule 2 to 5 of Part 10 of that Scheme;

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

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

“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 he 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 his role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting) and whose employment is not temporary;

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

- (a) as a firefighter, but not as a regular firefighter,
- (b) on terms under which he 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 his role as a firefighter (where 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 he receives;

“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⁽¹¹⁾; and

“surviving spouse” means a widow or widower.

(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⁽¹²⁾.

(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.

(11) 1995 c. 26.

(12) 1975 c. 44.

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 Secretary of State or the National Assembly for Wales, or
- (b) as an inspector, assistant inspector or other officer appointed under section 28 of the 2004 Act, or
- (c) in pursuance of arrangements made by the Secretary of State 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 Secretary of State, 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) he were, and his duties were duties as, a regular firefighter,
- (b) his pay and role were the same as they would have been had he not ceased to perform duties as a regular firefighter or, where section 10 of the Fire Services Act 1959(13) applies, the same as his 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 Secretary of State or the National Assembly for Wales, as the case may be.

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 Secretary of State or the National Assembly for Wales.

(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) he were, and his duties were duties as, a regular firefighter, and
- (b) any reference to a fire and rescue authority were a reference to the Secretary of State or the National Assembly for Wales, as the case may be.

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—

(13) 1959 c. 44. Repealed but reference included due to interrelation between this Scheme and the 1992 Scheme.

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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 29 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 his 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, he 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, 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), and

(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 his own default, in the exercise of his 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 his 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 his own default, in the exercise of his duties as a retained or volunteer firefighter.

(4) In paragraphs (2) and (3) of rule 1 of Part 10 and paragraph (5) of rule 3 of that Part, references to a qualifying injury are references to an injury received by a person, without his own default, in the exercise of his duties as a firefighter.

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

Disablement

8.—(1) References in this Scheme to a person's being permanently disabled are references to his being disabled at the time when the question arises for decision and to his 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 his 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, he shall be treated as being totally disabled.

(6) Where—

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

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

it shall be taken to be the date on which the claim that he 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 he not suffered that injury, he would not have died when he 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 his last day of service.

PART 2

INJURY AWARDS AND DUTY-RELATED COMPENSATION

Injury awards

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

(2) The firefighter is entitled—

(a) to a gratuity, and

(b) subject to paragraphs (3) and (4), to an injury pension, both calculated in accordance with Schedule 1.

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(3) Payment of an injury pension is subject to paragraph 4 of Part 1 of Schedule 1.

(4) Where the firefighter retired before becoming permanently disabled, no payment in respect of an injury pension shall be made for the period before he became permanently disabled.

Part-time, retained and volunteer firefighters

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

(2) Where a person —

- (a) first takes up employment with a fire and rescue authority as a retained or volunteer firefighter on or after 6 April 2006; and
- (b) is entitled to an award under this Part,

his award shall be calculated in accordance with Part 3 of Schedule 1.

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 his 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 his 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 he dies within twelve months of the date on which he sustained the injury that was the cause of his death—
 - (i) to his dependants, for their joint benefit; or
 - (ii) if he 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 person 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 his executor or personal representative, for the benefit of his 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 him, 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 has already been abated by virtue of paragraph (7), pay to the authority such amount as may be notified to him 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 his 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 1992 Scheme, or any lump sum payable under the 2007 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 person is competent for pay purposes if—

- (i) having been assessed, he has been found to be competent in the performance of the duties of his role; and
- (ii) he 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 his 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 him for financial support;
- (iii) any unmarried partner (other than a civil partner) who had been living with the firefighter in a long-term relationship (his "long-term partner");
- (iv) any dependent 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 his who at the date of his death is wholly or substantially dependent on him for financial support; and
- (vi) any brother, sister, daughter or son of his who at the date of his death is—
 - (aa) over the age of 19, and
 - (bb) wholly or substantially dependent on him 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—

- (a) any pension under rule 1 payable to a person who has attained state pensionable age; and
- (b) any pension to which he is entitled under rule IA1 of the 1992 Scheme or rule 1 of Part 6 of the 2007 Scheme (pension credit member's entitlement to pension); and

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(c) any increase under the Pensions (Increase) Act 1971⁽¹⁴⁾, does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule)⁽¹⁵⁾, 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 rules 3, 4 and 6 the surviving spouse or civil partner is entitled—

- (a) to a special pension calculated in accordance with Part 1 of Schedule 2, 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 his average pensionable pay or, as the case may be his final pensionable pay and the greater of—

- (a) as regards a surviving spouse—
 - (i) his average pensionable pay or, as the case may be, his final pensionable pay, and
 - (ii) two and a quarter times the amount of the pension that would have been payable under rule B3 of the 1992 Scheme or rule 2 of Part 3 of the 2007 Scheme (ill-health award) if on the date of his death he had retired on the ground of permanent disablement;
- (b) as regards a surviving civil partner—
 - (i) his average pensionable pay or, as the case may be, his final 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 he would have been entitled had he been the deceased's surviving spouse, the same proportion that the deceased's service after 5 April 1988 bears to the whole of his pensionable service.

(4) In any other case the amount of the gratuity is 25% of the deceased's average pensionable pay or, as the case may be, his final pensionable pay.

(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.

⁽¹⁴⁾ 1971 c. 56.

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

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 his receiving a fatal injury, for the immediate purpose of saving the life of another person or of preventing loss of human life, or
- (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 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 a fire and rescue 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 he 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.

(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), he would have been entitled had he been the deceased's surviving spouse, the same proportion that the deceased's service after 5 April 1988 bears to the whole of his pensionable service.

Limitation where spouse or civil partner is living apart

4.—(1) Subject to paragraph (1A), 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.

(1A) Paragraph (1) does not apply to a person —

- (a) who is a member of the 2007 Scheme, or
- (b) who first takes up employment with a fire and rescue authority on or after 6 April 2006 and is entitled to be a member of that Scheme, but elects not to pay pension contributions.

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(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 pension calculated—

- (a) in the case of a surviving spouse, in accordance with Part V of Schedule 3 to the 1992 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 “5 April 1988” for “5 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 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) Subject to paragraph (3), 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) Subject to paragraph (3), 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.

(3) Paragraph (1) and (2) do not apply to a person —

- (a) who is a member of the 2007 Scheme, or
- (b) who first takes up employment with a fire and rescue authority on or after 6 April 2006 and is entitled to be a member of that Scheme, but elects not to pay pension contributions.

Amount of survivor's pension: special cases

6.—(1) This rule applies in relation to a person —

- (a) who is a member of the New Firefighters' Pension Scheme (Wales)⁽¹⁶⁾ on the day on which he dies; or
- (b) in respect of whom an election under rule 5(1) of Part 2 of the 2007 Scheme not to make pension contributions has effect on that day.

(2) Subject to paragraph (3), where the person entitled to a special pension under rule 1 is more than twelve years younger than the deceased on the day on which he dies, a reduction of 2.5 per cent. for each year by which the age of the surviving spouse or civil partner exceeds, by more than twelve years, that of the deceased, shall be applied to the Schedule 2 amount.

(3) Where the application of paragraph (2) would result in the payment of a special pension of less than 50 per cent. of the Schedule 2 amount, the special pension shall be 50 per cent. of the Schedule 2 amount.

(4) In paragraphs (2) and (3), “the Schedule 2 amount” means the amount that would have been ascertained in accordance with Part 1 of Schedule 2 if rule 1 were not subject to this rule.

(5) For the purposes of paragraph (2), a part of a year shall be treated as a whole year.

(6) References in this rule to rule 1 include references to that rule as applied by rule 2(3).

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.

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.

(16) Set out in Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007 (S.I. 2007/1072 (W.110)).

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(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, or
- (b) by reason of his 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, or
- (c) by reason of his being substantially dependent on the deceased, in respect of a child who was not so dependent before the relevant date, or
- (d) by reason of his 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) Subject to paragraphs (3) and (4), no allowance shall be paid to a person if —

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

(3) A child who is aged 18 but not more than 23 is entitled to an allowance if he is in full-time education or attending a course of at least one year’s duration.

(4) A child who is aged 18 or more is entitled to an allowance if, when the scheme member dies, he is dependent on him by reason of permanent disablement.

(5) A child’s allowance ceases to be payable —

- (a) unless paragraph (3) or (4) applies, on his 18th birthday or the occurrence of an event referred to in paragraph (b) or (c), whichever first occurs;
- (b) where paragraph (3) applies, on his 23rd birthday or that on which his full-time education or course ceases, whichever first occurs;
- (c) where paragraph (4) applies, when the authority are satisfied —
 - (i) that the child is no longer permanently disabled; or
 - (ii) that the child pension should not have been awarded.

(6) Unless paragraph (5)(c) applies, an allowance payable in the circumstances mentioned in paragraph (4) is payable for life.

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, 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 2 of Schedule 29 to the Finance Act 2004(17) (lump sum death benefit 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 , and
 - (b) the fire and rescue authority are satisfied that there are sufficient reasons, and
 - (c) the surviving spouse or civil partner consents, and
 - (d) the deceased spouse or civil partner died before his 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.

(17) 2004 c. 12. As to "lump sum death benefit rule", see section 168 and Part 2 of Schedule 29 to, that Act.

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

(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.

Lump sum 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, and
(b) the fire and rescue authority are satisfied that there are sufficient reasons, and
(c) a surviving parent or the child's guardian, or if he has neither, the child himself, consents,
the fire and rescue authority may commute the allowance for a lump sum.

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

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 1992 Scheme, and
(c) any children's pensions payable under the 2007 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,
(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 1992 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 a child's ordinary or accrued allowance under the 1992 Scheme or a child pension under the 2007 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 1992 Scheme or the 2007 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 his written opinion, the independent qualified medical practitioner must certify that—

- (a) he has not previously advised, or given his opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and
- (b) he 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 a 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 his 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 him with a copy.

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

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(3) A fire and rescue authority shall be bound by any decision on any issue referred to in subparagraphs (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.

Appeal to Crown Court

3.—(1) Where a person claims that he 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 applies to them to do so.

(2) If he is dissatisfied with any determination given by the fire and rescue authority on reconsidering the case, he may appeal to the Crown 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 Crown 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 1992 Scheme (reckoning of and certificates as to pensionable service).

PART 7

SERVICEMEN

Interpretation of Part 7

1.—(1) This Part applies to a person who —

- (a) immediately before undertaking relevant service in the armed forces, was employed by a fire and rescue authority as a regular firefighter, and
- (b) ceased to be so employed at any time before 6 April 2006,

and in this Part such a person is referred to as a serviceman.

(2) For the purposes of this Scheme a serviceman shall be treated as having continued to be a regular firefighter during his period of relevant service in the armed forces (referred to in this Part as his “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(18) (“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.

(18) 1951 c. 65.

Awards to servicemen

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

(2) Subject to paragraph (3), rule B3 of the 1992 Scheme (ill-health award) has effect in relation to a serviceman to whom this rule applies as if he had been required to retire under rule A15 of the 1992 Scheme (compulsory retirement on grounds of disablement) at the end of his forces period.

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

- (a) pay him, instead of an ill-health gratuity under rule B3(2)(b) of the 1992 Scheme, a pension at the rate of 1/12th of his average pensionable pay, and
- (b) subject to paragraph (4), increase any such pension or any ill-health pension payable under the 1992 Scheme or the 2007 Scheme.

(4) Paragraph 1 of Schedule 6 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 his forces period, or
- (b) was permanently disabled at the end of his forces period, has not since been a regular firefighter, and dies either from the effects of an injury that occasioned his 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 his 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 1992 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 1992 Scheme.

(3) The appropriate amount mentioned in paragraph (2)(a) is £379.78 increased as described in rule E9(7) and (8) of the 1992 Scheme (flat-rate awards).

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

Servicemen who resume service as regular firefighters

4. 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 his 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.

PART 7A

RESERVISTS

Interpretation of Part 7A

- 1.—(1) This Part applies to a person who —
- (a) on or after 6 April 2006 —
 - (i) takes up employment with a fire and rescue authority, or
 - (ii) having been employed by such an authority before that date, becomes a member of the 2007 Scheme, and
 - (b) immediately before undertaking relevant service in the armed forces, is employed by the authority as a firefighter,

and in this Part such a person is referred to as a reservist.

(2) For the purposes of this Scheme a reservist shall be treated as having continued to be a firefighter during his period of relevant service in the armed forces (referred to in this Part as his “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(19) (“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 reservists

2.—(1) This rule applies to a reservist who, at the end of his forces period, is permanently disabled.

(2) Subject to paragraph (3), rule 2 of Part 3 of the 2007 Scheme (award on ill-health retirement) has effect in relation to a reservist to whom this rule applies as if the reservist were a firefighter member taking ill-health retirement at the end of his forces period.

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

- (a) pay him, instead of an ill-health pension under rule 2 of Part 3 of the 2007 Scheme, a pension at the rate of one twelfth of his final pensionable pay, and
- (b) subject to paragraph (4), increase any such pension.

(4) Paragraph 1 of Schedule 7 has effect for limiting increases under paragraph (3)(b).

Awards on death of reservists

- 3.—(1) This rule applies in the case of a reservist who —
- (a) dies during his forces period, or
 - (b) was permanently disabled at the end of his forces period, has not since been a firefighter, and dies either from the effects of an injury that occasioned his incapacity for the performance of duty or while in receipt of a pension.

(19) 1951 c. 65.

(2) If the reservist dies from the effects of an injury received during his forces period or a qualifying injury, the fire and rescue authority may, subject to paragraph (3), increase any pension or child pension payable under rule 1, or rule 6 or 9, of Part 4 of the 2007 Scheme.

(3) Paragraphs 2 and 3 of Schedule 7 have effect for limiting increases under paragraph (2).

Reservists who resume service as firefighters

4. Paragraph (2) of rule 2 or, as the case may be, paragraph (2) of rule 3 shall apply in relation to a reservist who, having sustained an injury during his forces period and resumed service as a firefighter —

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

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

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 firefighter suffers an injury, without his own default—

- (a) while in attendance at a fire, and
- (b) in the execution of his 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 him 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 rule, 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, or
- (b) by any other local authority, or
- (c) by a Minister of the Crown,

except a benefit payable under Chapter IV or Chapter V of Part II of the Social Security Act 1975⁽²⁰⁾; 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.

(20) 1975 c. 14.

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- (6) Subject to paragraph (6A), 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.

(6A) Where a person is or has been a part-time employee, the appropriate amount is that found by applying the formula —

where —

A is the amount that would have been calculated as mentioned in sub-paragraph (a), (b) or (c) of paragraph (6) (as the case may be) if the person had been a whole-time employee of a fire and rescue authority;

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

C is the period in years of his 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 employment and the denominator is the number of contractual hours for one year of whole-time employment; and

D is the period in years of his pensionable service.

- (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 (reduction of injury pension on account of certain other pensions) did not apply, and
 - (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 immediately before 6 April 2006 as a retained firefighter or volunteer firefighter, and
 - (b) has retired, and
 - (c) is permanently disabled,

if the infirmity that occasioned his 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; but an award under rule 1 or 3 shall be reduced by 75 per cent. of any other pension under the 1992 Scheme or the 2007 Scheme that is then in payment.

(3) Rules B7 (commutation), B9 (allocation), and B10 (limitation of commuted or allocated portion) of the 1992 Scheme⁽²¹⁾ or rule 9 of Part 3 of the 2007 Scheme (commutation: general) or rule 11 of that Part (allocation of pension) shall apply in relation to the awards to which, by virtue of paragraph (2) above, he is entitled.

(4) Subject to paragraph (4A), a person to whom paragraph (1) applies shall be treated for the purposes of rule B3 (illhealth awards) of the 1992 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) of the 1992 Scheme or, if he has become a member of the 2007 Scheme, rule 9 or 11 of Part 3 of the 2007 Scheme, rule 1 of Part 9 of that Scheme (review of ill-health pension) and rule 2 of that Part (consequences of review) apply accordingly in relation to the awards to which he is thus entitled.

(4A) In the case of a person who has become a member of the 2007 Scheme, the award under rule B3 of the 1992 Scheme shall be reduced by the amount of any award to which the person is entitled under rule 2 of Part 3 of the 2007 Scheme (award on ill-health retirement).

(5) This paragraph applies where —

- (a) a person dies from the effects of a qualifying injury or infirmity of mind or body occasioned by a qualifying injury, and
- (b) he has at any time before 6 April 2006 been employed by a fire and rescue authority as a retained or volunteer firefighter.

(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 (limitations with reference to date of marriage or formation of 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 4 of Part 5 (lump sum 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.

(10) The regular firefighter mentioned in paragraph (2), (4), (6) or (8) is one who is a wholetime 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 1 April 1980 paid pension contributions at the rate of 6p a week less than 6.75% of his pensionable pay.

(21) Rules B7, B9 and B10 are amended by [S.I. 2007/1074 \(W.112\)](#).

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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 fit, consider whether the degree of his 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 his 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 his infirmity by his own default,

the fire and rescue authority may reduce any injury award payable to him by them to not less than half its full amount.

(2) Where—

- (a) a pension has been reduced under paragraph (1), and
- (b) the amount of the reduced pension is less than that of the notional deferred pension —
 - (i) if the person is a member of the 1992 Scheme, on his 60th birthday,
 - (ii) if the person is a member of the 2007 Scheme, on his 65th birthday,

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 1992 Scheme⁽²²⁾ or rule 3 of Part 3 of the 2007 Scheme if the person had become entitled to one on the date of his ceasing to serve.

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 firefighter by any fire and rescue authority.

(22) Rule B5 was amended by [S.I. 2006/1672](#), Sch. 1 para 15.

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 his service as an employee of a fire and rescue authority which is certified by the National Assembly for Wales 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⁽²³⁾ 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. A person who 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), forfeits the whole or part of an award or sum obtained by him under this scheme, as the fire and rescue authority think fit.

PART 10

PAYMENT OF AWARDS AND FINANCIAL PROVISIONS

Authorities responsible for payment of awards

1.—(1) Subject to paragraph (2), an award payable under this Scheme to or in respect of a person by reason of his having received an injury while employed by a fire and rescue authority is payable by the authority by whom he was employed when he received the injury.

(2) Subject to paragraph (3), where —

- (a) an award is payable in respect of a qualifying injury sustained by a person who is employed by more than one authority; and
- (b) the injury is of such a nature that it cannot be attributed solely to one employment,

the award shall be paid —

- (i) by such one of his employing authorities as may be agreed, or

(23) 1911 c. 28, 1920 c. 75, 1939 c. 121, 1989 c. 6.

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- (ii) by each 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 a qualifying injury sustained in the course of his employment with one authority and a different qualifying injury sustained in the course of his employment with another authority shall be paid —

- (a) by such one of his employing authorities as may be agreed, or
- (b) by each 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 his 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 paragraph (6), in the case of a posthumous child any allowance under Part 4 is payable from the date of his birth.

(6) Where the deceased—

- (a) was in receipt of a pension, and
- (b) died during a period in respect of which he 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—

- (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 1992 Scheme or the 2007 Scheme.

(2) A pension payable —

- (a) under rule B9 of the 1992 Scheme⁽²⁴⁾ or rule 11 of Part 3 of the 2007 Scheme to the beneficiary of an allocation,
- (b) under rule IA1 of the 1992 Scheme⁽²⁵⁾ or rule 1 of Part 6 of the 2007 Scheme (pension credit member’s entitlement to pension), or
- (c) under rule J1 of the 1992 Scheme⁽²⁶⁾ or rule 1 of Part 15 of the 2007 Scheme (guaranteed minimum pensions),

is not a pension for the purposes of this rule.

(3) Subject to paragraph (4) and rule L4 of the 1992 Scheme or, as the case may be, rule 4 of Part 14 of the 2007 Scheme, 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 —
 - (i) under rule B1, B2, B3 or B5 of the 1992 Scheme to an ordinary, short service, ill-health or deferred pension, or
 - (ii) under rule 1, 2 or 3 of Part 3 of the 2007 Scheme to an ordinary, ill-health or deferred person, or
- (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 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 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.

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

4.—(1) In this rule—

- “B3 award” means an ill-health award under rule B3 of the 1992 Scheme;
- “injury award” means an injury award under Part 2 of this Scheme;
- “Part 8 award” means an injury award which is payable by virtue of rule 2 of Part 8 of this Scheme; and
- “rule 2 award” means an ill-health pension under rule 2 of Part 3 of the 2007 Scheme.

(2) This paragraph applies to a person employed as both a regular firefighter and a retained firefighter (whether by the same fire and rescue authority or by different fire and rescue authorities) who—

⁽²⁴⁾ Rule B9 of the 1992 Scheme was amended by [S.I. 2006/1672](#) Sch. 1 para 19 and Sch. 2 para 2(b)(i)

⁽²⁵⁾ Rule IA1 was inserted by [S.I. 2001/3691](#).

⁽²⁶⁾ Rule J1 was amended by [S.I. 2006/1672](#), Sch. 1 para 66 and Sch. 2 para 21.

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- (a) in respect of his retained employment, was employed before 6 April 2006, and
- (b) is entitled —
 - (i) from the fire and rescue authority which employs him as a regular firefighter, to an injury award, a B3 award, a rule 2 award, or more than one of those awards; and
 - (ii) from the fire and rescue authority which employs him as a retained firefighter, to a Part 8 award.

(3) The fire and rescue authority which employs a person to whom paragraph (2) applies as a regular firefighter shall pay (in full) the B3 award or, as the case may be, the rule 2 award and, subject to paragraph (4), the authority which employs him as a retained firefighter shall pay only the injury element of the Part 8 award.

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

(5) A firefighter who is entitled to both an injury award and a Part 8 award shall receive, in respect of those awards, a single award of an amount equal to the injury award 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); and
- (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 1992 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),
- (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.

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(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 him 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

Part 2

INJURY AWARDS AND DUTY-RELATED COMPENSATION

PART 1

CALCULATION OF AWARDS FOR FULL-TIME SERVICE

1.—(1) Subject to Part 2 and 3 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 1992 Scheme or rule 5 of Part 2 of the 2007 Scheme or a failure to elect under rule G2A of the 1992 Scheme or rule 4 of Part 11 of the 2007 Scheme have been, reckonable as pensionable service.

Table

Percentage disablement	Gratuity percentage of average pensionable pay or, as the case may be, final pensionable pay	Pension as percentage of average pensionable pay or, as the case may be, final pensionable pay			
		Less than 5 years' relevant service	5 or more but less than 15 years' relevant service	15 or more but less than 25 years' relevant service	25 or more years' relevant service
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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Percentage disablement	Gratuity percentage of average pensionable pay or, as the case may be, final pensionable pay	Pension as percentage of average pensionable pay or, as the case may be, final pensionable pay			
		Less than 5 years' relevant service	5 or more but less than 15 years' relevant service	15 or more but less than 25 years' relevant service	25 or more years' relevant service
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 his service as a firefighter (including, if rule 4 of Part 10 applies in his case, the aggregate of the pension to which he is entitled under rule B3 of the 1992 Scheme or, rule 2 of Part 3 of the 2007 Scheme and the amount of the difference referred to in rule 4(4) 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 he received the qualifying injury or, where an election under rule G3 of the 1992 Scheme or rule 5 of Part 2 of the 2007 Scheme had effect or the person failed to make an election under rule G2A of the 1992 Scheme or rule 4 of Part 11 of the 2007 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 1992 Scheme or rule 9 (commutation: general) or rule 11 (allocation of pension) of Part 3 of the 2007 Scheme,
- (b) under Part VIII of Schedule 2 to the 1992 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 his 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(27) (“the 1975 Act”) as relates to the qualifying injury, together with any relevant increase,

(27) 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.

- (b) so much of any reduced earnings allowance under section 59A of the 1975(28) 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 he is incapable for work within the meaning of section 36 of the 1975 Act, and the benefits are—

- (a) any sickness benefit under section 14 of the 1975 Act, including one to which he is only entitled by virtue of section 50A of that Act(29), and
- (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(30), 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(31),
- (b) under section 60 of the 1975 Act (special hardship)(32), or
- (c) under section 64 or 66 of the 1975 Act (dependants)(33),

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 his 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 he 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.

(28) Repealed but reference included due to interrelation between this Scheme and the 1992 Scheme.

(29) Repealed but reference included due to interrelation between this Scheme and the 1992 Scheme.

(30) Repealed but reference included due to interrelation between this Scheme and the 1992 Scheme.

(31) Repealed but reference included due to interrelation between this Scheme and the 1992 Scheme.

(32) Repealed but reference included due to interrelation between this Scheme and the 1992 Scheme.

(33) Repealed but reference included due to interrelation between this Scheme and the 1992 Scheme.

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PART 2

CALCULATION OF AWARDS FOR PART-TIME SERVICE

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

2.—(1) Subject to sub-paragraph (2) the amount of the gratuity or pension is—

where—

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

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

C is the period in years of his 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 his pensionable service.

(2) Where the person is a member of the 1992 Scheme, neither (B + C) nor D shall exceed 30 years.

PART 3

CALCULATION OF AWARDS FOR RETAINED OR VOLUNTEER SERVICE

1. The amounts of the injury gratuity and injury pension payable to a retained or volunteer firefighter shall be calculated in accordance with paragraph 1(2) of Part 1 as if for "pensionable service" there were substituted "pensionable retained service."

SCHEDULE 2

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 or, as the case may be, final 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—

where—

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A is the amount calculated under paragraph 1 as if the average pensionable pay or, as the case may be, the final pensionable pay was the pay the deceased would have received had he been a whole-time employee of a fire and rescue authority;

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

C is the period in years of his 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 his pensionable service.

(2) Where the person was a member of the 1992 Scheme, neither (B + C) nor D shall exceed 30 years.

PART 2

AWARD FOR SURVIVING SPOUSE OF POST-RETIREMENT MARRIAGE WHERE DECEASED IS A MEMBER OF THE 1992 SCHEME BUT NOT A MEMBER OF THE 2007 SCHEME

1.—(1) Where the surviving spouse of a person who—

- (a) was a member of the 1992 Scheme, but
- (b) was not a member of the 2007 Scheme,

would otherwise have been entitled to a special award under rule 1 of Part 3 or an augmented award under rule 2 of that Part, the amount of his 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 1992 Scheme (spouse's ordinary pension) 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 1992 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 he had, when he ceased to serve, retired because he was disabled in circumstances entitling him 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 his total pensionable service.

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SCHEDULE 3

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 or, as the case may be, his final 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.

(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 if the average pensionable pay or, as the case may be, the final pensionable pay was the pay the deceased would have received had he been a whole-time employee of a fire and rescue authority".

PART 2

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

1. This Part applies where a child entitled to a special allowance under rule 1 of Part 4 ("the special 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 special allowance, the allowance shall not be paid, and
- (b) in any other case, the amount of the special 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 paragraphs 2(b) and 3(b) of Part 2 of Schedule 4 to the 1992 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 he would be entitled if no relevant provision applied in his 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⁽³⁴⁾ (“the 1971 Act”), would for the time being be payable if it had begun, and first qualified for increases under the 1971 Act, on 1 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.

SCHEDULE 4

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 or, as the case may be, his final 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 or, as the case may be, his final 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,

(34) 1971 c. 56.

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would exceed the amount of the deceased's average pensionable pay or, as the case may be, his final 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 or, as the case may be, his final pensionable pay shall be calculated using the formula in paragraph 2 of Part 1 of Schedule 2.

PART 2

LUMP SUM IN LIEU OF CHILD'S ALLOWANCE

1. The amount of the lump sum 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 he 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

Part 6

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 he 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 his 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 National Assembly for Wales with two copies of the notice and two copies of the opinion.

(2) The National Assembly for Wales 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 National Assembly for Wales.

- (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 him or cause him 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 National Assembly for Wales with a written report of its decision on the relevant medical issues and the National Assembly for Wales 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 National Assembly for Wales, or
- (b) where no such arrangements have been made, such fees and allowances as the National Assembly for Wales may from time to time determine.

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- (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.

(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 National Assembly for Wales.

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 him if it was duly posted in a letter addressed to him at his last known place of residence.

SCHEDULE 6

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(2)(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 7

Part 7A

RESERVISTS: INCREASED AWARDS

1. The total of—

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

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(2) of Part 7A, and
- (b) the amount of any service pension payable to or for the child in respect of the reservist,

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.

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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 Wales. The new scheme is set out in Schedule 1 to the Order and, subject to provisions relating to rule 3 of Part 2, which have effect from 1 April 2000, has effect from 1 April 2006.

The power to provide for an order to have effect from a date that is earlier than that on which it is made is conferred by section 34(3) and 62 of the Fire and Rescue Services Act 2004.

Subject to the transitional provisions in articles 3 and 4 of the Order, the new Scheme supersedes 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. This Order also contains provisions which take into account the introduction of a new pension scheme for firefighters employed by fire and rescue authorities in Wales (the New Firefighters' Pension Scheme (Wales) set out in Schedule 1 to S.I. 2007/xxxx). This means that the Compensation Scheme applies to members of both pension schemes.

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.

The broad effect of rule 3 of Part 2 is that, where the firefighter dies while on duty, compensation of a lump sum is payable to his or her dependants. The lump sum is equivalent to the amount that a person employed in the role of firefighter by the same fire and rescue authority would receive as five years' pensionable pay after four years' service, at the rate applying at the date of the incident. If there are no dependants, a flat-rate payment of £950 is made to the deceased's estate. Those amounts are subject to abatement depending on the amount of any damages or compensation received by the firefighter or his or her dependants, and any gratuities paid.

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 that Scheme. Notice of election has to be given to the fire and rescue authority before 28 June 2007.

A regulatory appraisal has been carried out in connection with this Order and is available from the Fire and Rescue Branch, Community Safety Division, National Assembly for Wales, Rhydycar, Merthyr Tydfil, CF48 1UZ (telephone 01685 729000).