

## **FIREFIGHTERS' PENSION COMMITTEE**

### **FIREFIGHTERS' PENSION SCHEME (FPS)**

#### **FURTHER AMENDMENTS TO THE FIREFIGHTERS' PENSION SCHEME**

##### Note by ODPM

We have discussed with the Committee further amendments to the FPS (see papers PSC(04)09 and FPC(04)02). A draft amending order taking account of comments received has now been prepared and is included in Annex A.

The draft order will be issued under cover of a Firefighters' Pension Scheme circular shortly for statutory consultation. We would propose to invite Ministers to lay the order before Parliament in October.

The order includes an explanatory note and the main proposed amendments are summarised below.

#### **1. Changes to terminology**

1.1 The Fire and Rescue Services Act (FRSA) came in to force on 1 October 2004. Included within the Act are changes to the terminology relating to the Fire and Rescue Service. The term "Fire Brigade" has been replaced by the term "Fire and Rescue Service" (FRS) and the term "Fire Authority" has been replaced by "Fire and Rescue Authority" (FRA). For the purposes of the Firefighters' Pension Scheme, the terminology throughout needs to reflect that a Firefighter is employed by a Fire and Rescue Authority but works within the Fire and Rescue Service maintained by a Fire and Rescue Authority.

#### **2. Replacement of compulsory retirement age with normal pension age**

2.1 Rule A13 of the FPS currently provides compulsory retirement ages for members. A person holding the rank of assistant divisional officer or higher is required to retire at age 60 and a person who holds the rank of station officer or lower is required to retire at age 55.

2.2 The provision is discriminatory and is to be replaced by one providing for a normal pension age of 55. The amendments will include protection for those whose benefits from the scheme are currently based on service to age 60.

#### **3. Prevention of duplication of pensions from regular and retained employment**

3.1 Retained firefighters are not eligible for membership of the FPS but they are entitled to benefits where they suffer a qualifying injury. Under Rule J4 of the FPS, a retained member of a brigade who retires due to permanent disability occasioned by a

qualifying injury is treated as a regular firefighter for the purposes of Rules B3 (ill-health award) and B4 (injury award). Furthermore, under Rule J4 (7), any award will be calculated as if the retained firefighter held the rank of a regular firefighter and had the same service in that rank and was entitled to reckon as pensionable service a period equal to the retained service.

3.2 Some FRAs are employing regular firefighters as retained firefighters. The retained employment may either be with the same FRA or with a second FRA. This means that a regular/retained firefighter could currently be entitled to two pension awards. There are two concerns:

(i) Regular and retained employment with the same FRS.

The FPS does not provide for a situation where the retained and regular employment is with the same FRA. It is our view that, in this situation, a single set of awards (i.e. ill-health and injury) should be payable.

(ii) Regular employment with one FRA and retained employment with a second FRA.

Where the retained employment is with a second FRA, double payment may occur in that an injury gratuity, injury pension and an ill-health pension can be paid in respect of the retained employment and an ill-health pension in respect of the regular employment. Rule L4 of the FPS normally prevents duplication but specifically excludes awards payable under Rule J4 (Retained member of a brigade). The FPS therefore appears to provide for two separate awards but this is contradicted by Schedule 2 Part V paragraph 2(1) which requires an injury pension to be reduced by three quarters 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.

3.3 Amendment is required to protect the FPS from double payment in these circumstances. Although there are two separate employers there is, in effect, a single pension scheme. Our view is that there should be a single set of benefits payable in these situations. The FRA employing the scheme member as a retained firefighter would be responsible for payment of the injury elements i.e., the gratuity and injury pension, and the FRA employing the member as a regular firefighter would be responsible for the ill-health pension element.

#### **4. Basis for calculating transfer values**

4.1 Amendments to the FPS were made to allow membership by part-time regular firefighters by the Firemen's Pension Scheme (Amendment) Order 2004.

4.2 In paragraph 41 of that order, reference is made incorrectly to "average pensionable pay". Transfer values are calculated using annual pensionable pay and amendment to Schedule 6, Part II paragraph 4(a) is therefore required to substitute "annual pensionable pay" for "average pensionable pay".

## **5. Medical qualifications**

5.1 Under the definition of "Independent qualified medical practitioner" in Schedule 1 (Glossary of Expressions) as amended by the 2004 Order, such persons are required to hold a diploma in occupational medicine or an equivalent qualification issued by a competent authority in an EEA State (which has the meaning given by the European Specialist Medical Qualifications Order) 1995.

5.2 We now understand that the Specialist Medical Qualifications Order 1995 has been replaced by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003.

5.3 Amendment is therefore required for Schedule 1.

## **6. Resignation of Firefighters to avoid re-deployment and obtain deferred benefits**

6.1 There is an anomaly in the scheme rules that allows members found unfit for firefighting, but able to carry out other duties appropriate to the role, to resign prior to redeployment with a deferred pension and immediately request early payment of their deferred pensions under provisions in Rule B5(4)(b) on the grounds that they are permanently unfit for firefighting.

6.2 To correct this, an amendment is required to Rule B5(4)(b) to add after the words "he becomes permanently disabled" the words "for engaging in firefighting or the performing any other duties appropriate to his role as a firefighter". The provision will need to apply to any firefighter who has resigned on or after 13 September 2004. We are not seeking to capture those who resigned before the amendment to the definition of regular firefighter to include duties other than firefighting.

6.3 This amendment would be consistent with Rule K1(1) which provides for the cancellation of ill-health and injury pensions if a person becomes capable of performing the duties of a regular firefighter.

## **7. FPS Administrators for Inland Revenue purposes**

7.1 Section 270 of the Finance Act 2004 places a requirement on pension schemes to identify a scheme administrator to the Inland Revenue. For the FPS, we have agreed with the Inland Revenue that there should be separate scheme administrators for each of the 47 FRAs. This arrangement will be similar to proposals for the LGPS.

## **8. Ranks to Roles**

8.1 The Fire Service Appointments and Promotion Regulations 2004 (SI 2004 No. 481) introduced a new grading structure for the Fire and Rescue Service. An effect of the regulations is that a structure based on "rank" has been replaced by one based on "role". As a result, references in the FPS to "rank" will need, in most cases, to be replaced with "role".

## **9. Pensionable pay and salary sacrifice**

9.1 Amendment has been made to Rule G1 (pensionable pay and average pensionable pay) to define pensionable pay of a regular firefighter as the amount determined in relation to the performance of the duties of the role rather than the “pay he receives” as at present. We have advised FRAs on this previously but, to avoid any doubt about powers, this will ensure that authorities which have introduced salary sacrifice schemes can collect pension contributions on the amount of pay before reduction for the sacrifice in order to preserve full pensionable benefits.

### **Conclusion**

The Committee is invited to:

- (i) note the intention to issue the draft order for consultation; and
- (ii) comment.

*ODPM*

*September 2005*

**2005 No. XXXX**

**FIRE AND RESCUE SERVICES, ENGLAND**  
**PENSIONS, ENGLAND**

**The Firefighters' Pension Scheme (Amendment) (England)**  
**Order 2005**

<i>Made</i> - - - -	XXXXXX 2005
<i>Laid before Parliament</i>	XXXXXX 2005
<i>Coming into force</i> - -	XXXXXX 2005

The First Secretary of State, in exercise of the powers conferred by section 26(1) to (5) of the Fire Services Act 1947(a) and section 12 of the Superannuation Act 1972(b), as applied by section 16(3) of that Act(c), with the consent of the Treasury, makes the following Order:

**Citation, commencement and application**

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (Amendment) (England) Order 2005.

(2) This Order shall come into force on [XXXXXX 2005], but the amendments set out in the Schedule to this Order shall have effect from 1st October 2004, except that—

- (a) the following amendments shall have effect from [XXXXXX 2005]—
  - (i) the amendment made by paragraph 9, in so far as it relates to rule A13 (relating to normal pension age);
  - (ii) the amendments made by paragraph 7(a) and (b)(i), paragraph 75(d), in so far as it relates to the insertion of paragraphs (5) and (6) of rule L1, and paragraphs 78, 79 and 83(b) (relating to the prevention of duplication of certain awards); and
  - (iii) the amendment made by paragraph 81 (insertion of Part LA: scheme administration);

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(a) 1947 c.41, 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 and set out in the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), by the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306). The name of the scheme was changed to the Firefighters' Pension Scheme, by article 4(1) of that Order. Section 26 of the 1947 Act was amended by section 1 of the Fire Services Act 1951 (c.27), section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65), section 33 of, and Schedule 3 to, the Theft Act 1968 (c.60), sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 (c.11), section 100 of, and Schedule 27 to, the Social Security Act 1973 (c.38), section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 (c.18), section 32 of the Magistrates' Courts Act 1980 (c.43), section 1 of the Police and Firemen's Pensions Act 1997 (c.52) and article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551).

(b) 1972 c.11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7).

(c) Section 16 was continued in force, for the purposes of the Firemen's Pension Scheme (renamed the Firefighters' Pension Scheme) by the Firefighters' Pension Scheme (England and Scotland) Order 2004 (S.I. 2004/2306).

- (b) the following amendments shall have effect from 13th September 2004—
  - (i) the amendment made by paragraph 14(c) (relating to deferred pensions);
  - (ii) the amendment made by paragraph 78(b) (relating to the definition of “independent qualified medical practitioner”); and
  - (iii) the amendment made by paragraph 83(b)(ii)(aa) (relating to service reckonable on receipt of transfer value); and
- (c) the amendment made by paragraph 22 (relating to limiting awards to widows) shall have effect from 1st March 1992.

(3) The amendments made by this Order apply only in relation to the Firefighters’ Pension Scheme as it has effect in England(a).

**Amendment of the Firefighters’ Pension Scheme (England only)**

2. The Firefighters’ Pension Scheme set out in Schedule 2 to the Firemens’ Pension Scheme Order 1992(b) shall be amended in accordance with the Schedule to this Order.

Signed by authority of the First Secretary of State

[Minister of State][Parliamentary Under Secretary of State]  
Office of the Deputy Prime Minister

XXXXXXX 2005

We consent to the making of this Order,

Two of the Lords’ Commissioners of Her Majesty’s Treasury

**SCHEDULE 1**

**Article 2**

**AMENDMENT OF THE FIREFIGHTERS’ PENSION SCHEME  
(ENGLAND ONLY)**

1. In rule A3 (exclusive application to regular firefighters)(c) in paragraph (3), for “a member of a brigade”, substitute “an employee of a fire and rescue authority”.

2. In rule A4 (application to temporary employment connected with fire services)—

- (a) in paragraph (2), for “fire services”, substitute “fire and rescue services”; and
- (b) for paragraph (3), substitute—

“(3) Where this rule applies the person's relevant 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 relevant employment as if—

- (a) he were, and his duties were duties as, a regular firefighter,

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(a) The Secretary of State’s functions under section 26 of the Fire Services Act 1947, in so far as they were exercisable in relation to Scotland, were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750). The Secretary of State’s functions under section 26 of the Fire Services Act 1947, in so far as they were exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales Transfer of Functions Order 1999 (S.I. 1999/672); see the entry for the Fire Services Act 1947 in Schedule 1. The National Assembly for Wales preserved the scheme established under section 26 of the Fire Services Act 1947 (known in Wales as the Firefighters’ Pension (Wales) Scheme) by virtue of S.I. 2004/xxxx

(b) S.I. 1992/129; amended by 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691 and 2004/1912.

(c) Rule A3 was amended by S.I. 2001/3691.

- (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(a) 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 relevant employment,
  - (d) rules A14, A15 and L2 were omitted, and
  - (e) any reference to a fire and rescue authority were a reference to the Secretary of State.”.
- 3.** In rule A5 (application to permanent employment as instructor)—
- (a) in paragraph (2), for “fire services”, substitute “fire and rescue services”;
  - (b) in paragraph (3)—
    - (i) for “as a member of a brigade”, substitute “by a fire and rescue authority”;
    - (ii) omit sub-paragraph (b);
    - (iii) in sub-paragraph (c), for “fire authority”, substitute “fire and rescue authority”; and
    - (iv) in sub-paragraph (d), for “A13 to”, substitute “A14,”.
- 4.** In rule A6 (no application to auxiliary firefighter)—
- (a) for “a member of a brigade”, substitute “an employee of a fire and rescue authority”; and
  - (b) for “who is enrolled for service in the brigade which”, substitute “whose employment”.
- 5.** In rule A7 (reckoning of service for purposes of awards)—
- (a) in paragraph (1), for “a member of a brigade”, substitute “an employee of a fire and rescue authority”;
  - (b) in paragraph (2)(b), for “fire authority”, substitute “fire and rescue authority”; and
  - (c) in paragraph (4), for “member of a brigade” (in both places), substitute “employee of a fire and rescue authority”.
- 6.** In rule A8 (aggregate pension contributions for purposes of awards), in paragraph (1)(a), for “fire authority”, substitute “fire and rescue authority”.
- 7.** In rule A9 (qualifying injury)—
- (a) in paragraph (1), for “Except in rule J4,”, substitute “Except in rules J4 and L1(5) and (6),”; and
  - (b) in paragraph (2)—
    - (i) for “In rule J4, unless the context otherwise requires,”, substitute “In rules J4 and L1(5) and (6)”; and
    - (ii) for “member of a brigade”, substitute “firefighter”.
- 8.** In rule A10 (disablement)—
- (a) for paragraph (1A)(b), substitute—
 

“(1A) 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.”; and
  - (b) in paragraph (4), for “fire authority”, substitute “fire and rescue authority”.

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(a) 1959 c.44.

(b) Paragraph (1A) was inserted by S.I. 2004/1912.

9. For rules A13 (compulsory retirement on account of age) and A14 (compulsory retirement on grounds of efficiency of brigade), substitute—

**“Normal pension age**

**A13.** The normal pension age of employees of a fire and rescue authority appointed on terms under which they are or may be required to engage in fire-fighting is 55.

**Compulsory retirement of grounds of efficiency**

**A14.** A regular firefighter who—

- (a) has attained the age of 50, and
- (b) has, or but for an election under rule G3 or a failure to make an election under rule G2A would have, completed 25 years' pensionable service,

may be required by the fire and rescue authority to retire on the grounds that his retention in the fire and rescue service would not be in the general interests of its efficiency.”.

10. In rule A15 (compulsory retirement on grounds of disablement)(a), for “fire authority” (in both places), substitute “fire and rescue authority”.

11. In rule A16 (effective date of retirement), for “a member of a brigade”, substitute “an employee of a fire and rescue authority”.

12. In rule B1(ordinary pension)—

- (a) in paragraph (2)(a), for “joining another brigade”, substitute “taking up employment with another fire and rescue authority”; and
- (b) in paragraph (2)(b)—
  - (i) for “fire authority”, substitute “fire and rescue authority”; and
  - (ii) for “chief officer”, substitute “chief fire officer”.

13. In rule B2 (short service awards), for paragraph (1), substitute—

- “(1) This rule applies, unless immediately before his retirement an election under rule G3 not to pay pension contributions had effect, to a regular firefighter who—
- (a) retires on or after attaining the age of 65,
  - (b) is entitled to reckon at least 2 years' pensionable service, and
  - (c) is not entitled to any other pension or gratuity under this Part.”.

14. In rule B3 (ill-health award)—

- (a) in paragraph (2)(a) and (b), after calculated, insert “subject to paragraph (3); and
- (b) after paragraph (2), insert—

“(3) Where the person holds the role of Group Manager or a superior role, the calculation required by paragraph (2)(a) or (b) (as the case may be) shall be made as if his normal pension age were 60.”.

15. In rule B5 (deferred pension)—

- (a) in paragraph (2)—
  - (i) for “a member of a brigade”, substitute “an employee of a fire and rescue authority”;

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(a) Rule A15 was amended by S.I. 1997/2309.

- (ii) for “joining another brigade”, substitute “taking up employment with another fire and rescue authority; and
  - (iii) after “calculated”, insert “subject to paragraph (3A)”;
  - (b) in paragraph (3)—
    - (i) in sub-paragraph(b), for “rejoining his brigade”, substitute “re-employment with his fire and rescue authority; and
    - (ii) after “calculated”, insert “subject to paragraph (3A)”;
  - (c) after paragraph (3), insert—
 

“(3A) Where the person holds the role of Group Manager or a superior role, the calculation required by paragraph (2) or (3) shall be made as if his normal pension age were 60.”; and
  - (d) in paragraph (4)(b), after “he becomes permanently disabled”, insert “for engaging in firefighting or performing any other duties appropriate to his former role as a firefighter”.
- 16.** In rule B6 (repayment of aggregate pension contributions), in paragraph (1), —
- (a) for “a member of a brigade”, substitute “an employee of a fire and rescue authority”; and
  - (b) for “joining another brigade”, substitute “taking up employment as a regular firefighter with another fire and rescue authority”.
- 17.** In rule B7 (commutation - general provision)—
- (a) for “fire authority” (in each place), substitute “fire and rescue authority”;
  - (b) for paragraph (5)(b), substitute “(b) he retires at normal pension age (see rule A13 (normal pension age).”;
  - (c) omit paragraph (5)(c).
- 18.** In rule B8 (commutation – small pensions)(a), in paragraph (1), for “fire authority”, substitute “fire and rescue authority”.
- 19.** In rule B9 (allocation), for “fire authority” (in each place), substitute “fire and rescue authority”.
- 20.** In rule B11 (deduction of tax from certain awards), for “fire authority”, substitute “fire and rescue authority”.
- 21.** In rule B13 (part-time members)—
- (a) after “calculated”, insert “subject to paragraph (2)”;
  - (b) renumber the existing provision, as so amended, as paragraph (1); and
  - (c) after that paragraph, insert—
 

“(2) Where the person holds the role of Group Manager or a superior role, the calculation required by paragraph (1) shall be made as if his normal pension age were 60.”.
- 22.** In rule C1 (spouse’s ordinary pension), for “fire authority” (in each place), substitute “fire and rescue authority”.
- 23.** In rule C3 (spouse’s augmented award)—
- (a) for “fire authority” (in both places), substitute “fire and rescue authority”; and
  - (b) in paragraph (5)—
    - (i) for “rule C2(2) to (5) does not apply”, substitute “paragraphs (3) to (5) of rule C2 do not apply”; and

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(a) Rule B8(1) was amended by S.I. 2001/3691.

- (ii) for “holding the rank of firefighter in the brigade maintained by the London Fire and Civil Defence Authority”, substitute “employed as a firefighter by the London Fire and Emergency Planning Authority”.

**24.** For rule C5 (limitation on award to widow by reference to date of marriage), substitute—

**“Limitation on award to spouse by reference to date of marriage**

**C5.—**(1) A surviving spouse is not entitled to an ordinary pension under rule C1, a special award under rule C2, an augmented award under rule C3 or an accrued pension under rule C4 unless he or she was married to the deceased during a period before he or she last ceased to be a regular firefighter.

(2) A surviving spouse who, but for paragraph (1), would be entitled to a pension or other award mentioned in that paragraph, is instead entitled to a pension calculated in accordance with Part IV of Schedule 3.”.

**25.** For rule C6 (widow’s requisite benefit and temporary pension), substitute—

**“Spouse’s requisite benefit and temporary pension**

**C6.—**(1) This rule applies where—

- (a) a person entitled to reckon less than 2 years’ pensionable service who is or has been a regular firefighter and by whom pension contributions have at any time been payable under rule G2 dies, leaving a surviving spouse, after the beginning of the tax year in which he or she attained or would have attained state pensionable age, and
- (b) neither rule C2 nor rule C4 applies.

(2) Where this rule applies the surviving spouse is entitled—

- (a) in respect of the first 13 weeks following the death, to a temporary pension, and
- (b) after the last of those 13 weeks, to a requisite benefit pension.

(3) The weekly amount of the temporary pension is A - B, where—

A is the weekly amount, immediately before the deceased died, of his or her pensionable pay or, as the case may be, his or her pension or pensions (including any increase under the Pensions (Increase) Act 1971(a), and

B is the weekly amount of any children’s allowances payable in respect of his or her death.

(4) The requisite benefit pension shall be calculated in accordance with Part V of Schedule 3.

(5) If—

- (a) the deceased died while serving as a regular firefighter, and
- (b) the amount of the capitalised value of the requisite benefit pension, as calculated by the Government Actuary, is less than that of his average pensionable pay,

the surviving spouse is entitled to a gratuity equal to the difference between those amounts.”.

**26.** In rule C8 (limitations where spouses living apart), for “fire authority” (in both places), substitute “fire and rescue authority”.

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(a) 1971 c. 56.

**27.** In rule C9 (effect of remarriage), for “fire authority” (in both places), substitute “fire and rescue authority”.

**28.** In rule D5 (child’s allowance or special gratuity: limitations), for “fire authority” (in both places), substitute “fire and rescue authority”.

**29.** In rule E2 (adult dependent relative’s special pension) for “fire authority” (in both places), substitute “fire and rescue authority”.

**30.** In rule E3 (dependent relative’s gratuity), in paragraph (3), for “fire authority”, substitute “fire and rescue authority”.

**31.** In rule E4 (payment of balance of contributions to estate), in paragraph (4), for “fire authority”, substitute “fire and rescue authority”.

**32.** For rule E5 (gratuity in lieu of surviving spouse’s pension), substitute—

**“Gratuity in lieu of surviving spouse’s pension**

**E5.—**(1) Where the amount of any pension payable under Part C, together with any increase under the Pensions (Increase) Act 1971, does not exceed £260, or any greater amount prescribed by regulations for the time being in force under section 12C(1) of the Pension Schemes Act 1993(a), the fire and rescue authority may commute the pension for a gratuity.

(2) Where—

- (a) a surviving spouse is entitled to a pension under rule C1 or C2, and
- (b) the fire and rescue authority are satisfied that there are sufficient reasons, and
- (c) the surviving spouse consents,

the fire and rescue authority may commute for a gratuity the pension or so much of it as may be commuted without contravening rule E7.

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

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

**33.** In rule E6 (gratuity in lieu of child’s allowance), for “fire authority” (in both places), substitute “fire and rescue authority”.

**34.** In rule E7 (limitation on discretion to commute pension or allowance for gratuity), in paragraph (2), for “fire authority”, substitute “fire and rescue authority”.

**35.** In rule E9 (flat-rate awards)—

- (a) in paragraph (2), after “applies”, insert “and the deceased died before 1st October 2004,”;
- (b) after paragraph (2), insert—
  - “(2A) Subject to paragraph (3), where paragraph (1)(a) or (b) applies and the deceased retired on or after 1st October 2004, the amount of the pension is—
  - (a) if his last role was at a level not higher than Watch Manager A (Case A), £379.78;
  - (b) if his last role was at a level higher than Watch Manager A but not higher than Area Manager A (Case B), £494.54; and
  - (c) in any other case (Case C), £594.18,

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(a) 1993 c.48. Section 12C was inserted by the Pensions Act 1995 (c.26), section 136(5).

increased, in each case, in accordance with paragraph (7).”;

(c) in paragraph (3)(b), for the words after “April 1975”, substitute—

“and would have become entitled to reckon at least 10 years’ pensionable service had he continued to serve until—

(i) he could have been required to retire on account of age; or

(ii) if he died on or after 1st October 2004, normal pension age,

the amount specified in, as the case may be, paragraph (2)(a), (b) or (c) or paragraph (2A)(a), (b) or (c), is increased by £29.91.”;

(d) in paragraph (6), for “fire authority”, substitute “fire and rescue authority”; and

(e) in paragraph (9), for “the sums referred to in paragraph (2)(a), (b) and (c)”, substitute “the amounts specified in sub-paragraphs (a), (b) and (c) of paragraphs (2) and (2A)”.

**36.** In rule F1 (reckoning of and certificates as to pensionable service)(a)—

(a) in paragraph (3), for “fire authority”, substitute “fire and rescue authority”; and

(b) in paragraph (7), for “resumes service in his former brigade”, substitute “resumes employment with his former fire and rescue authority”.

**37.** In rule F2 (current service)—

(a) for paragraphs (1) and (2), substitute —

“(1) Subject to paragraphs (2) and (3), a person serving as a regular firefighter is entitled to reckon as pensionable service—

(a) any period of service after 30th September 2004, as a regular firefighter in the employment of a fire and rescue authority, except a period during which pension contributions were not payable under rule G2, and

(b) if he served as a regular firefighter in a brigade after 31st March 1972 and before 1st October 2004, any period of service in that brigade, except a period during which pension contributions were not payable under rule G2, and

(c) if he was serving in a brigade both on and immediately before 1st April 1972, any period he was entitled to reckon immediately before that date<sup>(b)</sup>.

(2) A person is not entitled to reckon as pensionable service by virtue of paragraph (1)—

(a) if he ceases employment with a fire and rescue authority after 30th September 2004, and again takes up employment with the authority, any period of service before he [last] took up such employment, or

(b) if he left a fire brigade after 31st March 1972 and—

(i) rejoined the brigade before 1st October 2004, or

(ii) took up employment with a fire and rescue authority on or after that date,

any period of service before he last rejoined the brigade or, as the case may be, took up employment with the authority, or

(c) any period of absence from duty as a regular firefighter as a result of sickness or injury certified by a qualified medical practitioner to be due to his own misconduct, or

(d) subject to paragraph (3) and rule F2A, any period of absence from duty without pay, or

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(a) Rule F1 was amended by S.I. 1997/2851.

(b) Fire and rescue authorities were established on 1st October 2004 under the Fire and Rescue Services Act 2004. Before that date, the provision of fire services was the responsibility of fire authorities under the Fire Services Act 1947 (c. 41, to which there are amendments not relevant to this Order).

- (e) any period of maternity or adoption leave in respect of which the person has the right to, but does not, pay contributions under rule G2A.”; and
- (b) in paragraph (3), for the words from the beginning to “is serving”, substitute “The fire and rescue authority which employs a person”.

**38.** In rule F2A(a) (maternity, paternity and adoption leave), for “fire authority” (in both places), substitute “fire and rescue authority”.

**39.** In rule F3 (previous service reckonable without payment)—

- (a) in paragraph (a) for “a brigade”, substitute “employment by a fire and rescue authority; and
- (b) in paragraph (b), for “resumed service as a regular firefighter in the brigade”, substitute “again taken up employment with the fire and rescue authority as a regular firefighter”.

**40.** In rule F4 (previous service reckonable on payment)—

- (a) for paragraph (1), substitute—

“(1) A person who—

- (a) has retired from employment with a fire and rescue authority without a pension and without any transfer value or cash equivalent becoming payable by the authority, and
- (b) has within 12 months, with the written consent, applied for before retiring, of the authority from which he retired, joined another fire and rescue authority as a regular firefighter, and
- (c) within 6 months of joining the other authority, or such longer period as the other authority may allow, has undertaken to pay the required amount in accordance with paragraph 1 of Part 1 of Schedule 6,

is entitled to reckon as pensionable service the period he was entitled to reckon when he retired.”

- (b) for paragraphs (3) and (4), substitute—

“(3) A person who—

- (a) has retired from employment by a fire and rescue authority with no pension other than an ill-health pension the unsecured portion of which has been terminated as mentioned in rule K1(3), and
- (b) has again taken up employment as a regular firefighter with that or another fire and rescue authority, and
- (c) within 6 months of taking up that employment, or such longer period as his employing authority may allow, has undertaken to pay in accordance with paragraph 1 of Part I of Schedule 6 a sum calculated in accordance with paragraph 2 of that Part,

is entitled to reckon as pensionable service the period he was entitled to reckon when he retired.

(4) A person who—

- (a) has retired from employment by a fire and rescue authority with a deferred pension, and
- (b) has by written notice to the authority relinquished the pension, and
- (c) has again taken up employment as a regular firefighter with that or another fire and rescue authority, and
- (d) within 6 months of taking up that employment, or such longer period as his employing authority may allow, has undertaken to pay in accordance with

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(a) Rule F2A was inserted by S.I. 2004/1912.

paragraph 1 of Part I of Schedule 6 the required amount described in paragraph (2),

is entitled to reckon as pensionable service the period he was entitled to reckon when he retired.”; and

- (c) in paragraph (5), in sub-paragraph (a), for “the fire authority maintaining the brigade from which”, substitute “the fire and rescue authority from whose employment”.

**41.** In rule F5 (period during which injury pension was payable)—

- (a) for paragraph (1), substitute—

“(1) A person who—

- (a) retired from a brigade before 1st October 2004, or from employment with a fire and rescue authority on or after that date, and became entitled to an injury pension, and
- (b) resumed service as a regular firefighter in that or another brigade before 1st October 2004, or took up employment with a fire and rescue authority on or after that date, in the circumstances and within the period mentioned in rule K1(1) to (4), and
- (c) within 6 months of his resuming service, or such longer period as the fire authority, or as the case may be, the fire and rescue authority, may allow, has undertaken to pay the required amount in accordance with paragraph 1 of Part I of Schedule 6,

is entitled to reckon as pensionable service the period during which he was entitled to the injury pension (“the pension period”).”; and

- (b) in paragraph (2), after “rank he held”, insert “or, as the case may be, role he had”.

**42.** In rule F6A (previous service reckonable following actionable loss)(a), for “fire authority” (in each place), substitute “fire and rescue authority”.

**43.** In rule F6B (calculation of amount of restitution payment)(b), for “fire authority” (in each place), substitute “fire and rescue authority”.

**44.** In rule F7 (receipt of transfer value)(c)—

- (a) in paragraph (1)—

- (i) for “fire authority”, substitute “fire and rescue authority”; and
- (ii) for “has become a regular firefighter in the brigade maintained by them” substitute “has taken up employment with them as a regular firefighter”; and

- (b) in paragraph (4), in the definition of “B”, for “fire authority”, substitute “fire and rescue authority”.

**45.** In rule F8 (transfer payments between fire authorities)(d), after paragraph (1), insert—

“(1A)Where—

- (a) after 29th September 2004, a person who retired from a brigade before 1st October 2004 (“the first employment”) takes up employment as a regular firefighter with a fire and rescue authority, or
- (b) a person retires from employment with a fire and rescue authority (“the first FRA”) and takes up employment as a regular firefighter with another fire and rescue authority (“the second FRA”), and

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(a) Rule F6A was inserted by S.I. 1997/2851.

(b) Rule F6B was inserted by S.I. 1997/2851.

(c) Rule F7 was amended by S.I. 2001/3691.

(d) Rule F8 was amended by S.I. 2001/3691.

- (c) in either case becomes entitled under rule F4 to reckon as pensionable service the period he was entitled to reckon when he retired,

the authority responsible for the person in the first employment or, as the case may be, the first FRA, shall, subject to paragraph (2), pay to the second FRA a sum calculated in accordance with Part III of Schedule 6.”.

**46.** In rule F9 (payment of transfer values)(a)—

- (a) in paragraph (1)—
  - (i) for “fire authority”, substitute “fire and rescue authority”; and
  - (ii) in sub-paragraph (a), for “serve as a regular firefighter in the brigade maintained by them”, substitute “be employed by the authority as a regular firefighter”;
- (b) in paragraph (2)—
  - (i) for “fire authority”, in the first place those words appear, substitute “fire and rescue authority”; and
  - (ii) for “the fire authority”, in the second place those words appear, substitute “the authority”; and
- (c) in paragraphs (5)(a) and (6)(b), for “fire authority”, substitute “fire and rescue authority”.

**47.** In rule G1 (pensionable pay and average pensionable pay), for paragraph (1), substitute—

“(1) Subject to paragraph (2), the pensionable pay of a regular firefighter is the amount determined in relation to the performance of the duties of his role (whether as a whole-time or part-time employee).”.

**48.** In rule G2 (pension contributions), for “fire authority” (in both places), substitute “fire and rescue authority”.

**49.** In rule G2A (optional pension contributions during maternity and adoption leave)(b)—

- (a) in paragraph (3)—
  - (i) for “fire authority” (in the first place those words appear), substitute “fire and rescue authority”; and
  - (ii) for “fire authority” (in the second and third places those words appear, substitute “authority”;
- (b) in paragraphs (5) and (7), for “fire authority” (in each place), substitute “fire and rescue authority”.

**50.** In rule G3 (election not to pay pension contributions), for “fire authority”, in each place, substitute “fire and rescue authority”.

**51.** In rule G5 (purchase of increased benefits)—

- (a) in paragraph (2)(c) and (d), for “retirement date”, substitute “normal pension age”; and
- (b) omit paragraph (3).

**52.** In rule G6 (election to purchase increased benefits)(c)—

- (a) in paragraph (1), for “fire authority” (in both places), substitute “fire and rescue authority”;

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(a) Rule F9 was amended by S.I. 2001/3691.  
(b) Rule G2A was inserted by S.I. 2004/1912.  
(c) Rule G6 was amended by S.I. 2001/3691.

- (b) in paragraph (2), for “retirement date”, substitute “normal pension age”;
- (c) in paragraph (4)—
  - (i) for “fire authority” (in both places), substitute “fire and rescue authority”; and
  - (ii) in sub-paragraph (a), omit “of brigade”; and

- (d) for paragraph (5), substitute—
  - “(5) An election under this rule—
    - (a) takes effect, subject to paragraph (3)(b), on the day on which the written notice is received by the fire and rescue authority, and
    - (b) is irrevocable.”.

- 53.** In rule G7 (payment of periodical contributions for increased benefits)—
  - (a) in paragraphs (1)(a) and (2), for “retirement date”, substitute “normal pension age”; and
  - (b) in paragraph (4), for “fire authority”, substitute “fire and rescue authority”.

- 54.** In rule G8 (effect of payment for increased benefits)—
  - (a) in paragraph (2)(c), for “retirement date”, substitute “normal pension age”;
  - (b) in paragraph (4)(a), for “a member of a brigade”, substitute “an employee of a fire and rescue authority”; and
  - (c) in paragraph (6), for “retirement date”, substitute “normal pension age”.

- 55.** In rule H1 (determination by fire authority)—
  - (a) for “fire authority” (in each place), substitute “fire and rescue authority”; and
  - (b) in paragraph (2A)(a), in sub-paragraph (b), for “the member”, substitute “the employee”.

**56.** In rule H2 (appeal to board of medical referees)(b), for “fire authority” (in each place), substitute “fire and rescue authority”.

**57.** In rule H3 (appeal to Crown Court or Sheriff), for “fire authority” (in each place), substitute “fire and rescue authority”.

**58.** In rule I2 (awards to servicemen), in paragraph (3), for “fire authority”, substitute “fire and rescue authority”.

**59.** In rule I3 (awards on death of servicemen), in paragraph (3), for “fire authority”, substitute “fire and rescue authority”.

**60.** In rule I4 (servicemen who resume service as regular firefighters), for “fire authority”, substitute “fire and rescue authority”.

- 61.** In rule I5 (servicemen who do not resume service in their former brigade)—
  - (a) in paragraph (1)—
    - (i) for “service in his former brigade”, substitute “employment with his former fire and rescue authority”; and
    - (ii) for “his former brigade” (in the second place where those words appear), substitute “the employment of that authority”.
  - (b) in paragraph (3), for “(former fire authority’s consent to joining new brigade)”, substitute “(former fire and rescue authority’s consent to taking up employment with new fire and rescue authority)”.

**62.** In rule I6 (pensionable service), for “during his forces period to serve in his former brigade”, substitute “in the employment of his former fire and rescue authority throughout his forces period”.

**63.** In rule I7 (pension contributions), in paragraph (1), for “to serve in his former brigade”, substitute “in the employment of his former fire and rescue authority”.

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(a) Paragraph (2A) was inserted by S.I. 2004/1912.  
(b) Rule H2 was amended by S.I. 1997/2309.

**64.** In rule IA2 (commutation of pension credit benefits)(a), for “fire authority” (in each place), substitute “fire and rescue authority”.

**65.** In rule IA4 (application of general rules), in paragraph (2), for “rule L2 (expenses and receipts of fire authorities)”, substitute “rule LA3 (expenses and receipts of fire and rescue authorities)”.

**66.** In rule J1 (guaranteed minimum pensions), in paragraph (3)(b), after “fire authority” insert “or the fire and rescue authority, as the case may be”.

**67.** In rule J3 (whole-time member of brigade who is not a regular firefighter)(b)—

- (a) in paragraph (1)—
  - (i) for “member of a brigade” (in the first place where those words appear), substitute “employee of a fire and rescue authority”; and
  - (ii) for “a member of the brigade”, substitute “an employee of the authority”;
- (b) in paragraph (2), for “the fire authority”, substitute “the fire and rescue authority”;
- (c) in paragraph (3), for “the brigade, the fire authority”, substitute “that employment, the fire and rescue authority”;
- (d) in paragraph (5)(a), for “fire authority”, substitute “fire and rescue authority”; and
- (e) in paragraph (7)(a), for “a regular firefighter of the rank of, as the case may be, fireman or firewoman”, substitute “employed in the role of firefighter”.

**68.** In rule J4 (part-time member of brigade)—

- (a) in paragraph (1)—
  - (i) for “This”, substitute “Subject to paragraph (1A), this”; and
  - (ii) for “a retained or volunteer member of a brigade”, substitute “employed by a fire and rescue authority as a retained firefighter or who was a volunteer firefighter”;
- (b) after paragraph (1), insert—

“(1A) Paragraph (1) does not apply where the person was also employed by the authority as a regular firefighter.”;
- (c) in paragraph (3)—
  - (i) for “This”, substitute “Subject to paragraph (3A), this”; and
  - (ii) for “a retained or volunteer member of a brigade”, substitute “employed by a fire and rescue authority as a retained firefighter or who is or has been a volunteer firefighter”;
- (d) after paragraph (3), insert—
- (e) (3A) Paragraph (3) does not apply where the person was also employed by the authority as a regular firefighter.; and
- (f) in paragraph (7)—
  - (i) for “member of a brigade”, substitute “employee of a fire and rescue authority”; and
  - (ii) for sub-paragraph (a), substitute—

“(a) was employed in the same role as the retained or volunteer firefighter and had the same service in that role”.

**69.** In rule J5 (members of brigade other than regular firefighters-supplementary), in paragraph (2), for “member of a brigade”, substitute “person”.

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(a) Rule IA2 was inserted by S.I. 2001/3691.

(b) Rule J3 was amended by S.I. 2004/1912.

- 70.** In rule K1 (cancellation of ill-health and injury pensions)—
- (a) in paragraph (1)—
    - (i) for “the fire authority”, substitute “the fire and rescue authority”; and
    - (ii) in sub-paragraph (c), for “could not have been required to retire on account of age”, substitute “would not have attained normal pension age”;
  - (b) in paragraph (2), for “The fire authority”, substitute “The fire and rescue authority”; and
  - (c) in paragraph (4)—
    - (i) for “service in the brigade”, substitute “employment with the fire and rescue authority”; and
    - (ii) for sub-paragraph (b), substitute—
      - “(a) the fire and rescue authority shall permit him to resume service forthwith in a role at a level equivalent to, or higher than, that which he had when he retired with the pension, and”.
- 71.** In rule K2 (reassessment of injury pension), for “fire authority” (in both places), substitute “fire and rescue authority”.
- 72.** In rule K3 (reduction of award in case of default), for “fire authority”, substitute “fire and rescue authority”.
- 73.** In rule K4 (withdrawal of pension during service as a regular firefighter)—
- (a) for “fire authority”, substitute “fire and rescue authority”; and
  - (b) for “serving as a regular firefighter in any brigade”, substitute “employed as a regular firefighter by any fire and rescue authority”.
- 74.** In rule K5 (withdrawal of pension on conviction of certain offences)—
- (a) for “fire authority” (in each place), substitute “fire and rescue authority”; and
  - (b) for “a member of the brigade”, substitute “an employee of a fire and rescue authority”.
- 75.** In the heading to Part L, omit “AND FINANCIAL PROVISIONS”.
- 76.** In rule L1 (authorities responsible for payment of awards)(a)—
- (a) in paragraph (1)—
    - (i) for “fire authority”, substitute “fire and rescue authority”; and
    - (ii) at the end, insert “or, where his employment ceased before 1st October 2004, by the fire and rescue authority which inherited the liabilities of the fire authority which last employed him”;
  - (b) in paragraph (2)—
    - (i) for “as a member of a brigade”, substitute “by a fire and rescue authority”; and
    - (ii) for “the fire authority”, substitute “the authority”;
  - (c) in paragraph (3), for “fire authority”, substitute “fire and rescue authority”; and
  - (d) for paragraph (4), substitute—
    - “(4) In this Scheme “the relevant fire and rescue authority”, in relation to a pension credit member, means—

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(a) Rule L1 was amended by S.I. 2001/3691.

- (a) the fire and rescue authority who employ the pension debit member from whose rights the pension credit member's pension is derived at the time when the pension sharing order takes effect, or
  - (b) if he is not then employed by a fire and rescue authority, the fire and rescue authority by whom he was last employed or, where his employment ceased before 1st October 2004, by the fire and rescue authority which inherited the liabilities of the fire authority which last employed him.
- (5) Subject to paragraph (6), an award payable in respect of a qualifying injury sustained by a person who is employed as both a regular firefighter and a retained firefighter shall be paid—
- (a) where the injury was sustained in the course of his regular employment, by the fire and rescue authority which employs him as a regular firefighter;
  - (b) where the injury was sustained in the course of his retained employment, by the fire and rescue authority which employs him as a retained firefighter;
  - (c) where the injury is of such a nature that it cannot be attributed solely to either his regular employment or his retained employment—
    - (i) by such one of his employing authorities as may be agreed; or
    - (ii) by both of them, in such proportion as may be agreed; or
    - (iii) in default of agreement, in equal proportions.
- (6) An award payable to a person in respect of both a qualifying injury sustained in the course of his regular employment and a different qualifying injury sustained in the course of his retained employment, shall be paid—
- (a) by such one of his employing authorities as may be agreed; or
  - (b) by both of them, in such proportion as may be agreed; or
  - (c) in default of agreement, in equal proportions.”.

**77.** Omit rule L2 (expenses and receipts of fire authorities).

**78.** In rule L3 (payment of awards)—

- (a) in paragraph (1)—
  - (i) for “fire authority” (in the first place those words appear), substitute “fire and rescue authority”; and
  - (ii) for “the fire authority” (in the second place those words appear), substitute “the authority”; and
- (b) in paragraphs (7), (8) and (9), for “fire authority”, substitute “fire and rescue authority”.

**79.** In rule L4 (prevention of duplication)(a), omit paragraph (2)(c).

**80.** After rule L4, insert—

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

**L4A.—**(1) This rule applies in relation to a person employed as both a regular firefighter and a retained firefighter who is entitled to both—

- (a) an ill-health award under rule B3 from the fire and rescue authority which employs him as a regular firefighter; and

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(a) Rule L4 was amended by S.I. 2001/3691.

(b) an ill-health and injury award under rules B3 and B4, as they have effect as mentioned in rule J4(2) (“the rule J4 award”), from the fire and rescue authority which employs him as a retained firefighter.

(2) The fire and rescue authority which employs the person as a regular firefighter shall pay the award under rule B3 in full and, subject to paragraph (3), the authority which employs him as a retained firefighter shall pay only the injury element of the rule J4 award.

(3) Where the amount awarded under rule B3 is less than the amount which, but for paragraph (2), would have been paid to the person as the ill-health element of the rule J4 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.

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

**L4B.**—(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 ordinary pension under rule C1,
- (b) a spouse’s accrued pension under rule C4
- (c) a spouse’s requisite benefit and temporary pension under rule C6,
- (d) a spouse’s award under rule C7 (award where no other award is payable),
- (e) a child’s ordinary allowance under rule D1, and
- (f) a child’s accrued allowance under rule D4.

(3) The descriptions mentioned in this paragraph are—

- (a) a spouse’s special award under rule C2 (whether or not by virtue of rule J4(4)),
- (b) a spouse’s augmented award under rule C3 (whether or not by virtue of rule J4(4)),
- (c) a child’s special allowance under rule D2 (whether or not by virtue of rule J4(5)), and
- (d) a child’s special gratuity under rule D3 (whether or not by virtue of rule J4(5)).

(4) Subject to paragraph (5), the award of the description in paragraph (2) shall be paid in full, and the award of the description in paragraph (3) shall not be paid.

(5) Where the award of the description in paragraph (3) would be of greater value, that award shall be paid in full and the award of the description in paragraph (2) shall not be paid.”.

**81.** In rule L5 (payments of awards – supplementary)—

- (a) for “fire authority” (in each place), substitute “fire and rescue authority”; and
- (b) in paragraph (8)(b), for “a member of a brigade”, substitute “an employee of a fire and rescue authority”.

82. After Part L, insert the following Part—

## “PART LA

### SCHEME ADMINISTRATION, RECEIPTS AND EXPENSES

#### **Scheme administrator for purposes of Part 4 of Finance Act 2004**

**LA1.** For the purposes of Part 4 (pension schemes, etc) of the Finance Act 2004(a), [each fire and rescue authority shall be a][the fire and rescue authorities shall jointly be the] scheme administrator of both this Scheme and the 1973 Scheme.

#### **Expenses and receipts of fire and rescue authorities**

**LA2.** Each fire and rescue authority shall maintain an account showing all sums received or paid by them under or for the purposes of this Scheme, or in consequence of rights acquired and obligations incurred by them under the 1973 Scheme and previous Firemen's Pension Schemes.”.

83. In Schedule 1 (interpretation), in Part I(glossary of expressions)(b)—

- (a) insert, after the entry for the expression “eligible person”—
  - (i) in the first column “fire and rescue authority”, and
  - (ii) in the second column, “A fire and rescue authority under the Fire and Rescue Services Act 2004(c);”;
- (b) in the entry for the expression “Independent qualified medical practitioner”, for the words in the second column, substitute—

“ “A medical practitioner holding a diploma in occupational medicine or an equivalent qualification issued by a competent authority in an EEA State (for the purposes of this definition “a competent authority” has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualifications Order 2003(d)) or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine(e) or an equivalent institution of an EEA State.”;
- (c) omit the entry (both columns) for the expression “Rank”;
- (d) in the definition of “Regular firefighter”, in the second column—
  - (i) after “after 13th September 2004”, insert “and before 1st October 2004”; and
  - (ii) at the end insert “In relation to any time on or after 1st October 2004, the expression 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.”;
- (e) omit the entry (both columns) for the expression “Relevant fire authority”;

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(a) 2004 c.12. See section 270 for the meaning of “scheme administrator”.

(b) Part 1 of Schedule 1 was amended by S.I. 2001/3691.

(c) 2004 c.21.

(d) S.I. 2003/1250, amended by S.I. 2004/1947.

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

- (f) after the entry for the expression “Regular firefighter”, insert—
  - (i) in the first column, “Relevant fire and rescue authority”; and
  - (ii) in the second column, “Construe in accordance with rule L1(4)”;
- (g) in the entry for the expression “Retained member of a brigade”, in the first and second columns, for “of a brigade”, substitute “of the fire and rescue service”;
- (h) after the entry for the expression “Relevant service in the armed forces”, insert—
  - (i) in the first column, “ “Retained member”, except in the expression “retained member of a brigade”; and
  - (ii) in the second column, “A member of the fire and rescue service who is obliged to attend—
    - (a) at the station to which he is attached for training, development and maintenance duties for an average of 2 hours each week and, promptly, at any time, in response to a call; and
    - (b) at any incident or other occurrence, or at any other station for standby duties during the employee’s period of availability.”;
- (i) omit the entry (both columns) for the expression “Retirement date”; and
- (j) in the entry for the expression “Volunteer member of a brigade”, in the first and second columns, for “of a brigade”, substitute “of the fire and rescue service”.

**84.** In Schedule 2 (personal awards)—

- (a) in Part III (ill-health pension), in paragraph 5(1)(a), for “could be required to retire on account of age”, substitute “reached normal pension age”;
- (b) in Part V (injury awards), for paragraph 2, substitute—

“2.—(1) The amount of a person’s pension under rule J4 shall be reduced by three quarters of the amount of any other pension referable to his service as a firefighter (including, if rule L4A applies in his case, the aggregate of the pension to which he is entitled under rule B3 and the amount of the difference referred to in rule L4A(2)).

(2) In any other case, 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 had effect or the person failed to make an election under rule G2A, 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 or B9 (commutation and allocation),
- (b) under Part VIII of this Schedule, or
- (c) by virtue of a pension debit,

shall be disregarded.”.

- (c) in Part VI (deferred pension), in paragraph 2(3)—
  - (i) omit “he could”;
  - (ii) at the beginning of sub-paragraph (a), insert “he could”; and
  - (iii) for sub-paragraph (b), substitute “he reached normal pension age”;
- (d) in Part VIA (calculation of awards for part-time service), in paragraph 2, for “member of a brigade” (in each place), substitute “employee of a fire and rescue authority”; and

(e) in Part VII (reduction of pension at state pensionable age), in paragraph 2(4), for “fire authority”, substitute “fire and rescue authority”.

85. In Schedule 3 (awards on death- spouses)—

- (a) in Part II (spouse's special pension), in paragraph 2(2), for "member of a brigade", substitute "employee of a fire and rescue authority";
- (b) for Part IV (pension for widow of post-retirement marriage), substitute—

## “ PART IV

### PENSION FOR SURVIVING SPOUSE OF POST-RETIREMENT MARRIAGE

**1.—**(1) Where the surviving spouse would otherwise have been entitled to an ordinary pension under rule C1 or a special award under rule C2, the amount of his or her pension under rule C5 shall, subject to sub-paragraph (2), be calculated in accordance with paragraph 1 of Part I of this Schedule in the same way as that of an ordinary pension.

(2) For the purposes of this paragraph, paragraph 1 of Part I 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) where the surviving spouse would otherwise have been entitled to a special award under rule C2, as if the base pension were the ill-health pension to which the deceased would have been entitled if he or she had, when he or she ceased to serve, retired because he or she was disabled in circumstances entitling him or her to such a pension.

**2.—**(1) Where the surviving spouse would otherwise have been entitled to an accrued pension under rule C4, the amount of his or her pension under rule C5 shall, subject to sub-paragraph (2), be calculated in accordance with Part III of this Schedule in the same way as that of an accrued pension.

(2) For the purposes of this paragraph, paragraph 2 of Part III has effect as if references to the deceased's deferred pension were references to the greater of—

- (a) the appropriate proportion of the deferred pension, and
- (b) subject to sub-paragraph (3), 1/160th of the deceased's average pensionable pay multiplied by the period in years of so much of his or her pensionable service as is reckonable by virtue of service or employment after 5th April 1978 ("relevant pensionable service").

(3) Where some or all of the deceased's service, which is reckonable as pensionable service, was part-time service, the amount at sub-paragraph (2)(b) shall be calculated using the formula in paragraph 2 of Part VIA of Schedule 2.

(4) In making the calculation mentioned in sub-paragraph (3), for the value of A there shall be substituted "A is the amount calculated under paragraph 2(2)(b) of Part IV of Schedule 3 if the average pensionable pay was the pay the deceased would have received had he or she been a whole-time employee of a fire and rescue authority" and in relation to B, C and D only pensionable service after 5th April 1978 shall be counted.

**3.** The appropriate proportion mentioned in paragraphs 1 and 2 is the proportion which the deceased's relevant pensionable service bears to his or her total pensionable service."; and

- (c) in Part V (spouse's requisite benefit pension), in paragraph 3, for "member of a brigade", substitute "employee of a fire and rescue authority".

**86.** In Schedule 4 (awards on death-children), in Part II (child's special allowance), in paragraph 4(2), for "member of a brigade", substitute "employee of a fire and rescue authority".

- 87.** In Schedule 5 (awards on death-additional provisions)—
- (a) in Part I (adult dependent relative’s special pension), in paragraph 3(2)(a), for “member of a brigade”, substitute “employee of a fire and rescue authority”;
  - (b) in Part II (gratuity in lieu of surviving spouse’s pension), in paragraph 1(b) and 2, for “fire authority”, substitute “fire and rescue authority”; and
  - (c) in Part III (gratuity in lieu of child’s allowance), in paragraph 1, for “fire authority”, substitute “fire and rescue authority”.
- 88.** In Schedule 6 (pensionable service and transfer values)—
- (a) in Part 1 (payments in respect of previous service)—
    - (i) in paragraph 1(1)—
      - (aa) for “he could be required to retire on grounds of age”, substitute “reaches normal pension age”; and
      - (bb) for “fire authority”, substitute “fire and rescue authority”;
    - (ii) in paragraph 1(2), for “fire authority”, substitute “fire and rescue authority”;
    - (iii) in paragraph 1(4), for “fire authority”, substitute “fire and rescue authority”; and
    - (iv) in paragraph 2(1), in the definition of “A”—
      - (aa) for “member of a brigade”, substitute “employee of a fire and rescue authority”; and
      - (bb) for “whole-time member”, substitute “whole-time employee”;
  - (b) in Part II (service reckonable on receipt of transfer value)—
    - (i) in paragraph 1(1), for “fire authority”, substitute “fire and rescue authority”; and
    - (ii) in paragraph 4(a)(b)—
      - (aa) for “average pensionable pay”, substitute “annual pensionable pay”; and
      - (bb) for “member of a brigade” (in both places), substitute “employee of a fire and rescue authority”;
  - (c) in Part III (transfer payments between fire authorities)—
    - (i) in paragraphs 2, 4 and 5(b), after “brigade”, insert “or fire and rescue authority (as the case may be)”; and
    - (ii) in paragraph 6, after “brigade”, insert “or, as the case may be, from employment with the first fire and rescue authority”.
- 89.** In Schedule 9 (appeals)(c)—
- (a) in Part I (appeal to board of medical referees), for “fire authority” (in each place), and “fire authority’s”, substitute “fire and rescue authority” and “fire and rescue authority’s”; and
  - (b) in Part II (appeal tribunals), in paragraph 1, after “divisional officer (Grade 1), insert “or a retired employee of a fire and rescue authority, other than the authority by whom the appellant is or was employed, who [immediately?] before his retirement had a [role in area management [or brigade management?]][managerial role senior to that of group manager?].”.

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(a) Paragraph 3(2) was inserted by S.I. 2004/1912, paragraph 39.  
 (b) Paragraph 4 was inserted by S.I. 2004/1912, paragraph 41.  
 (c) Schedule 9 was amended by S.I.1997/2309.

## EXPLANATORY NOTE

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

This Order amends the Firefighters' Pension Scheme, set out in Schedule 2 to the Firemen's Pension Scheme Order 1992, as it has effect in England ("the Scheme"). Except as mentioned below, the amendments have effect from 1st October 2004. The power to give amendments retrospective effect is conferred by section 12 of the Superannuation Act 1972.

Many of the amendments specified in the Schedule to this Order are consequential on the revocation of the Fire Services Act 1947 and its replacement by the Fire and Rescue Services Act 2004 ("the 2004 Act"). For example, references to fire authorities (unless retained for transitional purposes) have been amended to references to fire and rescue authorities and references to brigades have been amended to references to fire and rescue services or, depending on the particular context, to fire and rescue authorities.

The amendments which are not consequential on the 2004 Act are:

- (a) the replacement of rule A13, which provided for compulsory retirement at 55 for those of Station Officer or lower rank, and at 60 for those of Assistant Divisional Officer rank or higher rank, with a rule providing for a normal pension age of 55, whatever the individual's role. This amendment has effect from [xxxxxxxxxxxxxxxxx 2005];
- (b) the correction of an anomaly in the operation of rule B5(4)(b), which allowed an individual who was found to be unfit for fire-fighting, but able to carry out other duties, to resign with a deferred pension prior to re-deployment, and immediately request early payment of that pension on the ground that he or she was permanently unfit for fire-fighting. This amendment has effect from 13th September 2004;
- (c) the substitution of rules C5 and C6 to reflect the fact that the surviving spouse of a deceased firefighter may be either a widow or a widower. The opportunity has been taken to correct an error in rule C5, which limited by reference to the date of the marriage awards payable to widows. That correction removes the reference to rule C7. The [substitutions have] [correction in rule C5 has] effect from 1st March 1992 (the date on which the current Scheme came into force);
- (d) the substitution of rule E5, which relates to the payment to a surviving spouse of a gratuity instead of a pension. The former paragraphs (2) and (3), which applied in relation to widows and widower, respectively, have been amalgamated, and minor drafting changes have been made;
- (e) the amendment of rule L4, which prevents the duplication of certain injury awards. The main change of substance is to prevent duplicate injury awards in cases where the individual is employed both as a regular firefighter and as a retained firefighter (whether by the same fire and rescue authority or by different fire and rescue authorities). New rules L4A and L4B are introduced to deal expressly with the prevention of duplication in those cases. Consequential amendments are made to rules A9 (qualifying injury) and L1 (authorities responsible for payment of awards), and to Part V of Schedule 2 to the Scheme (adjustments where two fire and rescue authorities are responsible for pension payments);
- (f) the insertion of a new Part LA, which contains material formerly in rule L2, and new material consequential on section 270 of the Finance Act 2004, which requires pension schemes to identify a scheme administrator to the Inland Revenue. This amendment has effect from [xxxxxxxxxxxxxxxxxxxxxxxxx 2005];
- (g) the amendment of the definition of "independent qualified medical practitioner" in Part I of Schedule 1 to the Scheme, to reflect a change in the meaning of "a competent authority" brought about by the General and Specialist Medical

Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250, amended by S.I. 2004/1947). This amendment has effect from 13th September 2004;

- (h) the substitution of Part IV of Schedule 3, which reflects the substitution of rule C5;
- (i) the correction of an error in paragraph 4(a) of Part II of Schedule 6 to the Scheme; “annual pensionable pay” is substituted for “average pensionable pay”; and
- (j) the amendment of references to members of brigades by rank to references to employees of fire and rescue authorities by role. These amendments reflect a new grading structure introduced by the Fire Service Appointments and Promotion Regulations 2004 (S.I. 2004/481).

[The Firefighters’ Pension Scheme set out in Schedule 2 to the Firemens’ Pension Scheme Order 1992, as amended by the provisions of this Order, may be viewed at [\[website details\]](#).]

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