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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 141**

**The Firefighters' Pension Schemes  
(Amendment) (Scotland) Regulations 2015**

**PART 3**

**Amendment of the Firefighters' Pension Scheme (Scotland) Order 2007**

**General**

**23.** Schedule 1 to the Firefighters' Pension Scheme (Scotland) Order 2007<sup>(1)</sup> (in which the New Firefighters' Pension Scheme (Scotland) is set out) is amended in accordance with regulations 24 to 31.

**Amendment of Part 1**

**24.** In Part 1 (citation and interpretation), in rule 2(1)—

(a) in the appropriate places insert—

““the 2013 Act” means the Public Service Pensions Act 2013;

“connected member” has the meaning given in rule 1C of Part 2;

“connected special member” has the meaning given in rule 1D of Part 2;

“continued pension” has the meaning given in rule 1B of Part 3;

“continuity of service” has the meaning given in paragraph 2 of Schedule 2 to the 2015 Regulations;

“equivalent amount to the NFPS lower tier ill-health pension” has the meaning given in regulation 65(4) of the 2015 Regulations;

“final salary link” means the final salary link which applies when the requirements of paragraph 1 or paragraph 2 of Schedule 7 to the 2013 Act are met;

“scheme closing date” means 31st March 2015;

“scheme employment”, in relation to the 2015 Scheme, has the meaning given in regulation 6 of the 2015 Regulations;

“tapered protection closing date” has the meaning given in paragraph 3 of Schedule 2 to the 2015 Regulations;

“transition date” means—

(a) if the firefighter member or the special firefighter member is a tapered protection member of this Scheme, the date after the tapered protection closing date for that member;

- (b) if the firefighter member or special firefighter member is not a full protection member of this Scheme or a tapered protection member of this Scheme, the date after the scheme closing date; or
- (c) the date on which the member ceased to be a full protection member of this Scheme;

“transition member” has the meaning given in paragraph 1 of Schedule 2 to the 2015 Regulations;”;

- (b) for the definition of “Scheme Actuary”, substitute—

““Scheme Actuary” means the actuary appointed by Scottish Ministers under regulation 140 (appointment of scheme actuary) of the 2015 Regulations;”;

- (c) for the definition of “special member” substitute—

““special member” means—

- (a) a special firefighter member;
- (b) a special deferred member;
- (c) a special pensioner member;
- (d) a connected special member;”.

## **Amendment of Part 2**

- 25.** In Part 2 (scheme membership, cessation and retirement)—

- (a) after rule 1A (special membership), insert—

### **“Cessation of firefighter membership and special firefighter membership**

**1B.** A person ceases to be a firefighter member or a special firefighter member of this scheme—

- (a) where the member is not a full protection member of this Scheme or a tapered protection member of this Scheme, on the scheme closing date;
- (b) where the member is a tapered protection member of this Scheme on the tapered protection closing date, or if earlier, on the date on which the member ceases to be a tapered protection member;
- (c) where the member is a full protection member of this Scheme on the date on which the member retires from scheme employment in the 2015 Scheme, or if earlier on the date on which the member ceases to be a full protection member of this Scheme.

### **Standard membership of this Scheme after the transition date**

**1C.—**(1) In the case of a standard member of this Scheme to whom rule 1B applies and who joins the 2015 Scheme with continuity of service—

- (a) if that person (P) remains in pensionable service in that Scheme, P is a connected member of this Scheme in respect of the membership to which paragraph (4) applies;
- (b) if P opts out of pensionable service in the 2015 Scheme or leaves scheme employment in the 2015 Scheme before reaching normal retirement age, P is a deferred member of this Scheme;

- (c) if P opts into the 2015 Scheme or takes up scheme employment in the 2015 Scheme and paragraph (2) applies, P is again a connected member of this Scheme.
- (2) This paragraph applies if P re-enters pensionable service under the 2015 Scheme after a gap in pensionable service not exceeding 5 years.
- (3) In the case of a standard member of this Scheme to whom rule 1B applies and who joins the 2015 Scheme with a gap in pensionable service of more than 5 years, that member is a deferred member of this Scheme.
- (4) This paragraph applies in relation to the active member's account of the 2015 Scheme to which the qualifying service of the membership of this Scheme was added for the purposes of regulation 57 (qualifying service) of the 2015 Regulations.

#### **Special membership of this Scheme after the transition date**

- 1D.—**(1) In the case of a special member of this Scheme to whom rule 1B applies—
  - (a) if that person (S) was a special firefighter member of this Scheme who joins the 2015 Scheme immediately after rule 1B applied to S, or who had joined this Scheme as a special member on or after the date on which rule 1B applied to S, S is a connected special member of this Scheme in respect of the membership to which paragraph (2) applies;
  - (b) if that person (D) was a special firefighter member of this Scheme who joins the 2015 Scheme with a gap in pensionable service after rule 1B applied to D, or who had joined this Scheme as a special member with a gap in pensionable service after the date on which rule 1B applied to D, D is a special deferred member of this Scheme in respect of the membership to which paragraph (2) applies;
  - (c) if S opts out of pensionable service in the 2015 Scheme or leaves scheme employment under the 2015 Scheme before reaching normal retirement age, S is a special deferred member of this Scheme.
- (2) This paragraph applies in relation to the active member's account of the 2015 Scheme to which the qualifying service of the membership of this Scheme was added for the purposes of regulation 57 (qualifying service) of the 2015 Regulations.

#### **Membership of this Scheme where ill-health award paid from 2015 Scheme**

- 1E.—**(1) A person who is entitled to the payment of an equivalent amount to the NFPS lower tier ill-health pension under the 2015 Scheme continues to be a connected member, or connected special member, of this Scheme.
- (2) A person who was entitled to an ill-health award under this Scheme or under the 2015 Scheme and who accepts an offer of employment referred to in rule 2 of Part 9 of this Scheme or referred to in regulation 69(3)(b) of the 2015 Scheme, continues to be a connected member, or a connected special member, of this Scheme.”;
- (b) in rule 3 (normal retirement age and normal benefit age), after paragraph (4) insert—
  - “(5) The normal retirement age of connected members is 60.
  - (6) The normal retirement age of connected special members is 55.”; and
- (c) in rule 4 (last day of membership)—
  - (i) in paragraph (1) for “Where” substitute “Subject to paragraphs (3) to (5), where”;
  - (ii) after paragraph (2) insert—

“(3) The last day of membership of a firefighter member or a special firefighter member, who is not a full protection member of this Scheme or a tapered protection member of this Scheme, shall be taken to be the scheme closing date.

(4) The last day of membership of a firefighter member or a special firefighter member, who is a tapered protected member of this Scheme, shall be taken to be the tapered protection closing date or, if earlier, the date on which that member ceases to be a tapered protection member.

(5) The last day of membership of a firefighter member or a special firefighter member who is a full protection member of this Scheme shall be taken to be the date on which that member ceases to be a full protection member of this Scheme.”.

### **Amendment of Part 3**

**26.** In Part 3 (personal awards)—

(a) in rule 1 (ordinary pension), after paragraph (1) insert—

“(1A) Subject to paragraph (2), this rule applies to a connected member of this Scheme who was a firefighter member of this Scheme and satisfies an eligibility condition and retires from scheme employment in the 2015 Scheme having reached normal retirement age under this Scheme.”;

(b) in rule 1A (special member’s ordinary pension), after paragraph (1) insert—

“(1A) Subject to paragraph (2), this rule applies to a connected special member of this Scheme who satisfies a special eligibility condition and retires from scheme employment in the 2015 Scheme having reached normal retirement age.”;

(c) after rule 1A, insert—

#### **“Continued pension**

**1B.** Where a connected member, or connected special member, is entitled to an equivalent amount to the NFPS lower tier ill-health pension under regulation 65(3)(a) (entitlement to lower tier ill-health pension and to higher tier ill-health pension) of the 2015 Regulations and that member reaches normal retirement age under this Scheme, that member is entitled to a continued pension of an amount equal to the annual rate of the equivalent amount to NFPS the lower tier ill-health pension.”;

(d) in rule 3 (deferred pension), after paragraph (1) insert—

“(1A) Subject to paragraph (7), this rule applies to a person who ceases to be a firefighter member or a special firefighter member under rule 1B (cessation of firefighter membership and special firefighter membership) of Part 2.

(1B) Subject to paragraph (7), this rule applies to a connected member, or a connected special member, who—

- (a) opts out of pensionable service in the 2015 Scheme;
- (b) leaves scheme employment under the 2015 Scheme before reaching normal retirement age; or
- (c) ceases to be entitled to a lower tier ill-health pension or a higher tier ill-health pension under the 2015 Scheme in consequence of a review under regulation 69 (consequences of review) of the 2015 Regulations and declines an offer of employment made by the authority referred to in regulation 69(3)(b) of those Regulations.

- (1C) This rule ceases to apply to a connected member who re-joins the 2015 Scheme after a gap in pensionable service not exceeding 5 years.”;
- (e) in rule 4 (cancellation of deferred pension)—
- (i) in paragraph (1), for “Where” substitute “Subject to paragraph (4), where”;
- (ii) after paragraph (3), insert—
- “(4) Where the person entitled to receive a deferred pension is not a protected member of this Scheme, the member may not instruct the authority to cancel the deferred pension.
- (5) Where the person entitled to receive a deferred pension was a connected member of this Scheme and re-joins the 2015 Scheme after a gap in pensionable service not exceeding 5 years, the authority must cancel the deferred pension.”;
- (f) in rule 6 (pension on authority-initiated retirement), after paragraph (3) insert—
- “(4) Where the authority is considering making a determination under regulation 62 (employer initiated retirement) of the 2015 Regulations that an active member of that scheme who has attained the age of 55 should receive the payment of a pension without the early payment reduction, the authority must also consider making a determination under paragraph (1) of this rule.”;
- (g) in rule 7 (entitlement to two pensions), after paragraph (9) insert—
- “(10) Where a person to whom this rule applies is a person to whom paragraph (7) of rule 1 of Part 11 applies, this rule applies with the substitution in paragraph (4) for “final pensionable pay to which he is entitled on the last day of his membership of the Scheme” of “final pensionable pay as modified by paragraph (7) or (8) of rule 1 of Part 11”.”
- (h) in rule 7C (additional pension benefit: supplementary provisions)—
- (i) after paragraph (2), insert—
- “(2A) Where rule 1B of Part 2 applies to a person (P) who is not a connected member or entitled to the payment of an ill-health award under regulation 65 (entitlement to lower tier ill-health pension and higher tier ill-health pension) of the 2015 Regulations, additional pension benefit is payable at normal benefit age; paragraphs (4) to (6) of rule 3 (deferred pension) shall apply in relation to that benefit as if it were a deferred pension to which P was entitled under that rule.”;
- (ii) after paragraph (3) insert—
- “(3A) Where the firefighter member is entitled to an ill-health award under regulation 65 of the 2015 Regulations, additional pension benefit is payable under this Scheme at the same time as the equivalent amount to the NFPS lower tier ill-health pension is payable under the 2015 Scheme.”;
- (i) in rule 9 (commutation: general)—
- (i) in paragraph (1), after “paragraphs” insert “(1B),”;
- (ii) after paragraph (1) insert—
- “(1A) This rule applies to an equivalent amount of the NFPS lower tier ill-health pension included in the annual rate of a retirement pension for the person under regulation 59(2)(ba) of the 2015 Regulations may commute a portion of it for a lump sum.
- (1B) Where a person is entitled to a continued pension under rule 1B, that person may not commute a portion of that pension under this rule.
- (j) in rule 11 (allocation of pension), in paragraph (1)—

- (i) after “A firefighter member” insert “, a connected member or a connected special member”; and
- (ii) for “the firefighter member” (in both places), substitute “the member”.

#### **Amendment of Part 10**

**27.** In Part 10 (qualifying service and pensionable service)—

(a) in rule 1 (qualifying service)—

- (i) after paragraph (h) omit “and”; and
- (ii) after paragraph (i) insert—  
“; and

(j) any period of pensionable service for the active member’s account under the 2015 Scheme to which the person’s qualifying service had been added for the purposes of qualifying service in the 2015 Scheme”;

(b) after rule 3, insert—

#### **“Period after transition date**

**3A.** A period of service or of leave or unpaid leave after a person’s transition date is not reckonable as pensionable service or as special pensionable service under this Scheme.”.

#### **Amendment of Part 11**

**28.** In Part 11 (pensionable pay, pension contributions and purchase of additional service)—

(a) in rule 1 (pensionable pay)—

- (i) in paragraph (1), for “paragraph (3)” substitute “paragraphs (3) and (6)”; and
- (ii) after paragraph (5), insert—

“(6) Subject to paragraphs (7) and (8), where rule 1B of Part 2 has applied to a member of this Scheme who has joined the 2015 Scheme with continuity of service and paragraph 1 or 2 of Schedule 7 (final salary link) to the 2013 Act applies to that person, paragraph (1) of this rule does not apply and final pensionable pay is determined in accordance with Schedule 7 so that the member’s pensionable pay under the 2015 Regulations, as modified by paragraph 33 of Schedule 2 to those Regulations derived from service in the 2015 Scheme, is to be regarded as pensionable pay derived from service in this Scheme.

(7) Where paragraph (6) and paragraph 33(4) of Schedule 2 to the 2015 Regulations apply to a member of this Scheme, the pensionable pay to be regarded as derived from service in this Scheme is the pensionable pay derived from service in the 2015 Scheme under the 2015 Regulations as modified by paragraph 33 of Schedule 2 to those Regulations for the last year of pensionable service in the 2015 Scheme before the reduction in pensionable pay.

(8) Where paragraph 33(3) of Schedule 2 to the 2015 Regulations applies to a member of this Scheme, pensionable pay is determined in accordance with paragraph (1) of this rule and paragraph (6) does not apply.”.

(b) in rule 2 (final pensionable pay)—

- (i) in paragraph (2), for “paragraph (3)” substitute “paragraphs (2A) and (3); and
- (ii) after paragraph (2), insert—

- “(2A) In the case of a connected member or a deferred member to whom paragraph (6) of rule 1 applies, “the relevant date” means—
- (a) where the final salary link applies, the last day of pensionable service in the 2015 Scheme; or
  - (b) where paragraph 33(4) to Schedule 2 to the 2015 Regulations applies, the last day of pensionable service in the 2015 Scheme before the reduction of pensionable pay in the 2015 Scheme.”;
- (c) in rule 4 (optional pension contributions during maternity and adoption leave)—
- (i) in paragraph (3), for “paragraph (6)” substitute “paragraphs (6) and (7)”;
  - (ii) after paragraph (3), insert—

“(3A) Where the firefighter member returns to work, or ceases to be employed, after the transition date, the election under paragraph (3) may only be made in respect of the period before the transition date.”;
  - (iii) after paragraph (6), insert—

“(7) Where a person to whom this rule applies is a connected member who dies before the end of the period of 30 days referred to in paragraph (3) without having given the required notice—

    - (a) that person shall be deemed to have given the required notice; and
    - (b) the authority—
      - (i) shall give to that person’s personal representatives a statement of the amount of contributions due; and
      - (ii) may collect the contributions with the agreement of the personal representatives by deducting the amount required from any lump sum death benefit payable under regulation 96 (lump sum payable on death of active member) of the 2015 Scheme.”;
- (d) in rule 6A (election to purchase service during the limited period)—
- (i) after paragraph (7) insert—

“(7A) A person who intends to join this Scheme as a connected special member shall make the election in paragraph (7) and where a person elects to join this Scheme as a connected special member—

    - (a) the reference to “special firefighter member” in this rule and rule 6B shall be treated as referring to a “connected special member”;
    - (b) the paragraphs referring to a “special firefighter member” in this rule and rule 6B shall be treated as referring to a “connected special member”.”; and
  - (ii) after paragraph (9) insert—

“(9A) Where a special firefighter member has not paid all the mandatory special period pension contributions before the date on which rule 1B of Part 2 applies to that member, the member may continue to pay those contributions after that date.”;
- (e) in rule 7 (duration of periodical contributions and premature cessation)—
- (i) at the end of sub-paragraph (c) of paragraph (2), omit “or”; and
  - (ii) after sub-paragraph (d) insert—

“; or

- (e) in the case of a connected member, or a connected special member, on the date that member ceases to be in pensionable service under the 2015 scheme.”;
- (f) in rule 8 (discontinuance and resumption of periodical contributions), after paragraph (6) insert—
  - “(7) This rule applies to a connected member, or a connected special member, as it applies to a firefighter member.”;
- (g) in rule 9 (periodical contributions in respect of periods of unpaid service or absence), after paragraph (4) insert—
  - “(5) This rule applies to a connected member, or a connected special member, as it applies to a firefighter member who elects to purchase additional service in respect of a period of unpaid service or unpaid leave before the transition date.
  - (6) Where the connected member complies with the requirements in paragraph (2), that person may require the authority to treat the period referred to in paragraph (5) as pensionable service or in the case of a connected special member as special pensionable service.”.

## **Amendment of Part 12**

### **29. In Part 12 (transfers into and out of the Scheme)—**

- (a) in rule 1 (interpretation of Part 12), after “In this Part—” insert—
  - ““final salary benefit” means benefit accrued under a final salary scheme as defined in section 37 (general interpretation) of the 2013 Act;”;
- (b) in rule 2 (entitlement to transfer value payment)—
  - (i) in paragraph (2), for “A firefighter” insert “Subject to paragraph (2A), a firefighter”; and
  - (ii) after paragraph (2), insert—
    - “(2A) A transition member (T), who is a connected member of this Scheme or has received a lower tier ill-health pension under the 2015 Scheme, is not entitled to require the payment of a transfer value in respect of the rights to benefits that have accrued to or in respect of T under this Scheme.”;
- (c) in rule 8 (applications for acceptance of transfer value payment from another scheme), after paragraph (3) insert—
  - “(4) A person who is a protected member of this Scheme, or a person who becomes an active member of the 2015 scheme, may apply for a transfer value payment from another public service pension scheme which is a final salary scheme, or includes final salary benefit, to be accepted by the authority for the purposes of this Scheme.”;
- (d) in rule 9 (procedure for applications under rule 8)—
  - (i) in paragraph (2), for “paragraph (4)” substitute “paragraphs (4) and (5),”; and
  - (ii) after paragraph (4), insert—
    - “(5) Where the application is made by a person who joins this Scheme as a firefighter member (other than as a special firefighter member) the application must be made within one year of the person becoming a firefighter member of this Scheme or within one year of the person becoming an active member of the 2015 Scheme, as the case may be.”; and
- (e) in rule 10 (acceptance of transfer value payments)—



- (i) in paragraph (1), for “paragraph (3)” substitute “paragraphs (3) and (4)”; and
- (ii) after paragraph (3), insert—

“(4) Where the application under rule 8 is made by a person to whom paragraph (4) of that rule applies, paragraphs (2) and (3) (limit on maximum amount of pensionable service that can be accrued) of rule 2 of Part 10 do not apply to that transfer value payment and the authority must accept the transfer value payment unless paragraph (3) of this rule applies.”.

#### **Amendment of Part 14**

- 30.** In Part 14 (miscellaneous provisions), after rule 4 insert—

##### **“Actuarial valuations**

**4A.** Where the Scheme Actuary is carrying out a valuation of the 2015 Scheme and is required to carry out a valuation of this Scheme, the authority must provide the Scheme Actuary with any data that the Scheme Actuary requires in order to carry out a valuation and prepare a report on the valuation.”.

#### **Amendment of Annex 1**

- 31.** In Annex 1 (ill-health pensions), after paragraph 6 insert—

“**7.** Where a connected member or a connected special member of this Scheme is entitled to the payment of an equivalent amount to a lower tier ill-health pension, that amount shall be calculated in accordance with paragraph 1 of this annex.”.