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STATUTORY INSTRUMENTS

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**1997 No. 2851**

**FIRE SERVICES  
SUPERANNUATION**

**The Firemen's Pension Scheme (Amendment No. 2) Order 1997**

*Made* - - - - *1st December 1997*  
*Laid before Parliament* *8th December 1997*  
*Coming into force* - - *29th December 1997*

In exercise of the powers conferred upon him by section 26 of the Fire Services Act 1947<sup>(1)</sup>, the Secretary of State, with the approval of the Treasury<sup>(2)</sup>, and after consultation with the Central Fire Brigades Advisory Council and the Scottish Central Fire Brigades Advisory Council, hereby makes the following Order:

**1.** This Order may be cited as the Firemen's Pension Scheme (Amendment No. 2) Order 1997 and shall come into force on 29th December 1997.

**2.—(1)** The Schedule to this Order has effect for varying the Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992<sup>(3)</sup>.

**(2)** A reference in the Schedule to this Order to a numbered rule or Schedule is a reference to the rule or Schedule identified by that number in that Scheme.

Home Office  
27th November 1997

*George Howarth*  
Parliamentary Under-Secretary of State

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**(1)** 1947 c. 41; section 26 was amended and extended by the Fire Services Act 1951 (c. 27), section 1; by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 42; by the Superannuation Act 1972 (c. 11), sections 12 and 16; and by the Police and Firemen's Pensions Act 1997 (c. 52), section 1(3).  
**(2)** See S.I. 1981/1670.  
**(3)** S.I. 1992/129; to which there has been an amendment not relevant to this Order.

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We approve

1st December 1997

*Graham Allen*  
*Bob Ainsworth*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## SCHEDULE

### AMENDMENTS TO THE FIREMEN'S PENSION SCHEME

1. In rule F1(3) (reckoning of, and certificates as to, pensionable service), after the words “F6,” there shall be inserted “F6A,”.

2. After rule F6 there shall be inserted the following rules:

**“Previous service reckonable following actionable loss**

**F6A.**—(1) This rule applies to a regular firefighter who—

- (a) has opted out or transferred out or both,
- (b) has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986(4) (actions for damages in respect of contraventions of rules etc. made under the Act).

(2) A regular firefighter—

- (a) to whom this rule applies, and
- (b) who has given notice under rule G3(5) cancelling his election under rule G3(1),

may give written notice to the fire authority that he wishes them to accept payment of a transfer value in order to create or restore his reckonable service.

(3) Paragraph (4) or (5) applies where the fire authority have accepted—

- (a) within twelve months of the date of the notice given under paragraph (2), or
- (b) such longer period as they may allow,

payment of a transfer value in relation to a regular firefighter by whom a notice has been given under paragraph (2) (whether or not he has ceased to be a regular firefighter after the date of the notice) not exceeding the amount which they calculate in accordance with rule F6B would need to be made as a restitution payment in respect of him.

(4) Where the amount of the transfer value equals the amount which the fire authority calculate in accordance with rule F6B would need to be made as a restitution payment in respect of that firefighter—

- (a) the whole of the relevant period shall be treated as reckonable service, and
- (b) he shall be treated for the purposes of calculating any award under this Scheme as having made pension contributions throughout the period of reckonable service credited under this paragraph.

(5) Where the amount of the transfer value is less than the amount which the fire authority calculate in accordance with rule F6B would need to be made as a restitution payment in respect of that firefighter—

- (a) the fire authority shall calculate in accordance with the methods and assumptions required by rule F6B the period of reckonable service that the transfer value represents and treat as reckonable service such period,
- (b) he shall be treated for the purposes of calculating any award under this Scheme as having made pension contributions throughout the period of reckonable service credited under this paragraph, and
- (c) that period shall be treated as a continuous period with the same final date as the final date of the relevant period.

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(4) 1986 c. 60.

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(6) Where a regular firefighter who is being credited under paragraph (4) or (5) with a period of reckonable service has previously been credited with an additional period of reckonable service calculated in accordance with Part IV of Schedule 6 (amount of transfer value) in respect of the relevant period, the fire authority may adjust the amount of the transfer value that they accept under this rule to ensure that no part of the additional period of reckonable service that was previously credited is included in the period of reckonable service credited under paragraph (4) or (5).

(7) In this rule and rule F6B—

- (a) a person shall be taken to have opted out if he had elected under rule G3(1) (election not to pay pension contributions) not to pay pension contributions and for any period during which he was a regular firefighter he instead made contributions to a personal pension scheme;
- (b) a person shall be taken to have transferred out if a transfer value has been paid in respect of him under rule F9 (payment of transfer values) by a fire authority to a personal pension scheme;
- (c) “personal pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993<sup>(5)</sup>; and
- (d) “relevant period”, in relation to a regular firefighter, means the total of any periods of opted out and, where appropriate, transferred out service.

#### **Calculation of amount of restitution payment**

**F6B.**—(1) A fire authority shall calculate in accordance with this rule the restitution payment that would need to be made to them in respect of a person to whom rule F6A applies to create or restore his position to what it would have been if he had not opted out or, where relevant, also transferred out.

(2) The restitution payment for a regular firefighter is an amount equal to the sum of—

- (a) the capitalised value at the material date, determined in accordance with the relevant methods and assumptions, which would produce a service credit equal to his total period of opted out service, including the capitalised value of any rights under the Pensions (Increase) Act 1971<sup>(6)</sup> and the Pensions (Increase) Act 1974<sup>(7)</sup>; and
- (b) in the case of a regular firefighter who also transferred out, the greater of—
  - (i) any transfer value paid to a personal pension scheme in respect of his transferred out service by a fire authority under rule F9 (payment of transfer values), increased by interest calculated at a rate approved by the Government Actuary over the period from the date of payment of that transfer value to the assumed calculation date; and
  - (ii) the cash equivalent transfer value that would be payable by the fire authority in respect of that transferred out service if they were to pay a cash equivalent transfer value in respect of that service determined in accordance with the relevant methods and assumptions applicable immediately after the assumed calculation date.

(3) In this rule—

“assumed calculation date” means the date on which it is assumed, for the purpose of calculating a restitution payment, that a transfer value will be paid to the fire authority;

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(5) 1993 c. 48.  
 (6) 1971 c. 56.  
 (7) 1974 c. 9.

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“material date” means the date on which the fire authority receives a notice under rule F6A(2), and

“relevant methods and assumptions” means ones notified by the Government Actuary for the calculation of cash equivalent values from occupational pension schemes.”.

3.—(1) For paragraph (5) of rule G3 (election not to pay pension contributions) there shall be substituted:

“(5) Subject to paragraphs (5A) and (6), a person who has made an election under paragraph (1) may cancel it by giving written notice to the fire authority.

(5A) Except in the case of a person to whom rule F6A applies, a notice under paragraph (5) must be given no later than his 45th birthday.”.

(2) At the beginning of rule G3(6) there shall be inserted the words “Except in the case of a person to whom rule F6A applies,”.

(3) At the end of rule G3 there shall be added the following paragraph:

“(9) References in this Scheme to any period during which an election under this rule not to pay pension contributions had effect shall not include any period in respect of which a transfer value or lump sum has been paid under rule F6A.”.

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## EXPLANATORY NOTE

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

The Schedule to this Order amends the Firemen’s Pension Scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992.

Rule F6A, as inserted by paragraph 2 of the Schedule, makes provision in respect of a regular firefighter who has opted out of the Scheme or also transferred out of it, has instead made contributions to a personal pension scheme and has suffered loss as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986. Where such a person has cancelled that opt-out and has given notice whilst still a regular firefighter of returning to the Scheme, a transfer value may be made to the fire authority in respect of the lost service, or some of it. Rule F6B, as inserted by paragraph 2, makes provision for the calculation of the amount of the restitution payment.

The amendments made by paragraph 3(1) and (2) allow such a firefighter to cancel his election to opt out after his 45th birthday, which is the deadline that applies in other cases, and without being required to undergo a medical examination.

Paragraphs 1 and 3(3) make consequential amendments.