

2019 No. 358

FIRE SERVICES

PENSIONS

**The Firefighters' Pension Schemes (Scotland) Amendment
Order 2019**

Made - - - - 29th October 2019

Laid before the Scottish Parliament 31st October 2019

Coming into force - - 10th December 2019

The Scottish Ministers make the following Order in exercise of the powers conferred by section 26(1), (2) and (5) of the Fire Services Act 1947(a), section 34(1) to (4) of the Fire and Rescue Services Act 2004(b), sections 12 and 16 of the Superannuation Act 1972(c), and all other powers enabling them to do so.

In accordance with section 34(5) of the Fire and Rescue Services Act 2004, the Scottish Ministers have consulted with such persons as they considered appropriate.

Citation, commencement, effect and extent

1.—(1) This Order may be cited as the Firefighters' Pension Schemes (Scotland) Amendment Order 2019.

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- (a) 1947 c.41; repealed by section 52 and schedule 2 of the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) of section 26 continue to have effect 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 article 3 of 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 S.I. 2004/2306. Section 26 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 and schedule 3 of the Theft Act 1968 (c.60), sections 16 and 29 and schedule 8 of the Superannuation Act 1972 (c.11), section 100 and schedule 27 of the Social Security Act 1973 (c.38), section 1 and schedule 1 of the Social Security (Consequential Provisions) Act 1975 (c.18), section 32 of the Magistrates' Courts Act 1980 (c.43), article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551), section 1 of the Police and Firemen's Pensions Act 1997 (c.52) and section 256 and schedule 25 of the Civil Partnership Act 2004 (c.33). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of article 2 and schedule 1 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, (S.I. 1999/1750) and article 2 and the schedule of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304).
- (b) 2004 c.21; amended by section 89(1) and paragraph 24 of schedule 3 of the Fire (Scotland) Act 2005 (asp 5). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
- (c) 1972 c.11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of article 2 and schedule 1 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). Section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1947. Section 16 is repealed by section 52 and schedule 2 of the Fire and Rescue Services Act 2004 (c.21) but continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of article 3 of S.I. 2004/2306.

- (2) This Order comes into force on 10 December 2019 but—
- (a) article 2(1) (insofar as necessary to give effect to article 2(2)) and (2) has effect from 1 April 2007,
 - (b) article 3(1) (insofar as necessary to give effect to article 3(2) to (5) and (7)) and (2) to (5) and (7) has effect from 6 April 2006, and
 - (c) article 2(1) (insofar as necessary to give effect to article 2(3)), article 3(1) (insofar as necessary to give effect to article 3(6)) and articles 2(3) and 3(6) have effect from 1 December 2009(a).
- (3) This Order extends to Scotland only.

Amendment of the Firemen’s Pension Scheme Order 1992

2.—(1) The Firemen’s Pension Scheme Order 1992(b) is amended in accordance with paragraphs (2) and (3).

(2) In rule B5A (entitlement to two pensions)(c), after paragraph (3) insert—

“(3A) The amount of the first pension determined under paragraph (3) or (4B)(a), is increased for each year before the firefighter’s last day of service by an amount equivalent to that which would apply if the first pension were a pension in payment commencing from the day after the date of the firefighter’s last day of service at the higher rate of pay, to which the Pensions (Increase) Act 1971(d) applied.”.

(3) In rule IA2(1) (commutation of the pension credit benefits)(e), for “In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit: small pensions)” substitute “Where the amount of pension payable under rule IA1 does not exceed the trivial commutation limit in paragraph 7 of schedule 29 of the Finance Act 2004 (lump sum rule)(f)”.

Amendment of the Firefighters’ Pension Scheme (Scotland) Order 2007

3.—(1) Schedule 1 to the Firefighters’ Pension Scheme (Scotland) Order 2007(g) (the New Firefighters’ Pension Scheme (Scotland)) is amended in accordance with paragraphs (2) to (7).

(2) In Part 1, in rule 2(1) (interpretation)—

- (a) in the definition of “child”, in paragraph (a)(iii) for “nominated partner” substitute “cohabiting partner”,
- (b) after the definition of “child’s pension” insert—
 - ““cohabiting partner” has the meaning given by rule 1(5A) of Part 2,”, and
- (c) omit the definition of “nominated partner”.

(3) In Part 2 (scheme membership, cessation and retirement), rule 1 (scheme membership)—

- (a) in paragraph (5)(b) for “nominated partner” substitute “cohabiting partner”,
- (b) after paragraph (5) insert—
 - “(5A) For the purposes of this rule, “cohabiting partner” in relation to the scheme member means a person—
 - (a) who has been living with the scheme member, otherwise than as the scheme member’s spouse or civil partner,

(a) Section 12(1) of the Superannuation Act 1972 (c.11) and section 34(3) of the Fire and Rescue Services Act 2004 (c.21) allow provision to be made with retrospective effect.

(b) S.I. 1992/129.

(c) Rule B5A was inserted by S.S.I. 2008/161 and amended by S.S.I. 2015/141.

(d) 1971 c.6.

(e) Rule IA2(1) was inserted by S.I. 2001/3691.

(f) 2004 c.12.

(g) S.S.I. 2007/199 as amended by S.S.I. 2008/160.

- (b) at the date on which the question of the cohabiting partner’s status in relation to the scheme member falls to be considered, is not the spouse or civil partner of any other person,
- (c) is financially dependent on the scheme member, or is, with the scheme member, in a state of mutual financial dependency, and
- (d) is in a long-term relationship with the scheme member and could enter into a marriage or civil partnership with the scheme member,

“long-term relationship” means a relationship that has continued, to the exclusion of any other relationship, for a period of at least 2 years ending with the date on which the question of the person’s status in relation to the scheme member falls to be considered, or such shorter period as the authority may in any particular case think fit, and

“scheme member” means a firefighter member, deferred member or pensioner member.”, and

- (c) omit paragraphs (6) to (9).

(4) In Part 3 (personal awards)—

- (a) in rule 7 (entitlement to two pensions)—

- (i) in paragraph (2) for “paragraphs (3) and (4)” substitute “paragraphs (3), (3A) and (4)”, and

- (ii) after paragraph (3) insert—

“(3A) The amount of the first pension determined under paragraph (3), is increased for each year before the firefighter’s last day of service by an amount equivalent to that which would apply if the first pension were a pension in payment commencing from the date that paragraph (1) first applied to the member, to which the Pensions (Increase) Act 1971(a) applied.”, and

- (b) in rule 11(2)(a) (allocation of pension) for “nominated partner” substitute “cohabiting partner”.

(5) In Part 4 (survivors’ pensions)—

- (a) in the heading to Chapter 1 and the headings to rules 1 and 5, for “nominated partners” in each place where it occurs substitute “cohabiting partners”, and

- (b) in rule 1 (pensions for surviving spouses, civil partners and nominated partners), in paragraphs (1), (2) and (3) for “nominated partner” in each place where it occurs substitute “cohabiting partner”.

(6) In Part 6 (pension sharing on divorce), rule 2 (commutation of whole of pension credit benefits) for “In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit: small pensions)” substitute “Where the amount of pension payable under this Part does not exceed the trivial commutation limit in paragraph 7 (trivial commutation of lump sum) of schedule 29 of the Finance Act 2004”.

(7) In Part 7 (reservists), in rule 3(3) (awards on death or permanent disablement) for “nominated partner” substitute “cohabiting partner”.

KATE FORBES

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
29th October 2019

(a) 1971 c.56.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to two instruments relating to pensions payable in respect of firefighters in Scotland, namely:

- a) the Firemen's Pension Scheme Order 1992 ("the 1992 Order"), and
- b) the Firefighters' Pension Scheme (Scotland) Order 2007 ("the 2007 Order").

Article 2 makes amendments to the 1992 Order. Article 2(2) clarifies that where a firefighter has an entitlement to two pensions under the 1992 Scheme, the amount of the first pension is updated annually from the date that the firefighter ceased to earn the higher rate of pay. Article 2(3) updates an out of date statutory reference. Article 2(2) has effect from 1 April 2007, the date that the entitlement to two pensions under rule B5A of the 1992 Scheme had effect in terms of S.S.I. 2008/161. Article 2(3) has effect from 1 December 2009, the date that the original statutory reference was revoked.

Article 3 makes amendments to the 2007 Order. Article 3(2), (3), (4)(b), (5) and (7) remove the requirement for a deceased member and the surviving partner of that member to have completed a nomination form before a survivor's pension can be paid and make consequential changes insofar as nominated partners become cohabiting partners. Article 3(4)(a) clarifies that where a firefighter has an entitlement to two pensions under the 2007 Scheme, the amount of the first pension is updated annually from the date that the firefighter ceased to earn the higher rate of pay. Article 3(6) updates an out of date statutory reference. Article 3 (other than article 3(6)) has effect from 6 April 2006, the date that the 2007 Order had effect. Article 3(6) has effect from 1 December 2009, the date that the original statutory reference was revoked.

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