

2019 No. 381

PUBLIC SERVICE PENSIONS

The Firefighters' Pension Scheme Amendment (Increased Pension Entitlement) (Scotland) Order 2019

Made - - - - *7th November 2019*

Laid before the Scottish Parliament *11th November 2019*

Coming into force - - *30th December 2019*

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

Citation, commencement, effect and extent

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

(2) This Order comes into force on 30 December 2019 and, subject to paragraph (3), has effect from 8 April 2019(c).

(3) Article 2 of this Order, in so far as required to give effect to paragraph 2 of the schedule, and paragraph 2 of the schedule have effect from 12 November 1979 to 8 April 2019.

(4) This Order extends to Scotland only.

(a) 1947 c.41 ("the 1947 Act"); repealed by section 52 and schedule 2 of the Fire and Rescue Services Act 2004 (c.21).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 S.I. 1992/129, by virtue of S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme by S.I. 2004/2306. 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 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 1 of the Police and Firemen's Pensions Act 1997 (c.52), section 256 and schedule 25 of the Civil Partnership Act 2004 (c.33) and S.I. 1976/551. The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of S.I. 1999/1750 and S.I. 2006/304.

(b) 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 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 but continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of S.I. 2004/2306.

(c) Retrospective effect is permitted by section 12 of the Superannuation Act 1972 as applied by section 16 of that Act.

Amendment of the Firemen's Pension Scheme Order 1992

2. Schedule 2 of the Firemen's Pension Scheme Order 1992^(a) as it has effect in Scotland is amended in accordance with the schedule of this Order.

St Andrew's House,
Edinburgh
7th November 2019

KATE FORBES
A member of the Scottish Government

(a) S.I. 1992/129; amended by S.I. 1997/2309, S.I. 1997/2851, S.I. 1998/1010, S.S.I. 2001/310, S.I. 2001/3649, S.S.I. 2004/385, S.S.I. 2005/566, S.I. 2005/3228 S.S.I. 2006/342, S.S.I. 2007/200 and S.S.I. 2008/161. The Firemen's Pension Scheme was made under section 26 of the Fire Services Act 1947 . That Act was repealed by section 52 and schedule 2 of the Fire and Rescue Services Act 2004 . The Scheme and subsections (1) to (5) of section 26 were continued in force by S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme by S.I. 2004/2306.

SCHEDULE

Article 2

Amendment of schedule 2 of the Firemen's Pension Scheme Order 1992

1. In rule P1, (interpretation)—

- (a) in the definition of “the existing Orders”—
 - (i) for “and” after “Order 2008” substitute “;”,
 - (ii) after “Order 2009” insert “, the Pensions Increase (Review) Order 2011(a), the Pensions Increase (Review) Order 2012(b), the Pensions Increase (Review) Order 2013(c), the Pensions Increase (Review) Order 2014(d), the Pensions Increase (Review) Order 2015(e), the Pensions Increase (Review) Order 2017(f), the Pensions Increase (Review) Order 2018(g) and the Pensions Increase (Review) Order 2019(h)”,
- (b) after the definition of “pension authority”, insert—

“reconciliation exercise” means the exercise at the instigation of HMRC carried out by SPPA from time to time to check for any discrepancy between the amount of legal entitlement to GMP payments of a pensioner member and the actual payments received by a pensioner member;”,
- (c) in the definition of “relevant fire and rescue authority”, for “the authority” to “Scheme” substitute “on or after 8 August 2012 the Scottish Fire and Rescue Service”.

2. In rule P2 (application of this Part)—

- (a) after “5th April 2009” insert “or 7 April 2019”,
- (b) for “that date” substitute “either of those dates”.

3. In rule P4 (authorisation of payment of GMP-related payments), for paragraph (2) substitute—

“(2) Where a relevant administering authority has paid GMP-related payments before 8 April 2019, the authority may not recover those payments on or after 8 April 2019.”.

4. In rule P5 (increased Pension Entitlement)—

- (a) in paragraph (2) for “2009–10” substitute “2019–20”,
- (b) in paragraph (6)(a), for “2009–10” substitute “2019–20”,
- (c) in paragraph (6)(b)—
 - (i) for “2009–10”, in each place it occurs, substitute “2019–20”,
 - (ii) for “not entitled to a guaranteed minimum pension” substitute—

“—

 - (i) not entitled to a guaranteed minimum pension; or
 - (ii) entitled to the original guaranteed minimum pension awarded prior to the reconciliation exercise in respect of the award”.

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- (a) S.I. 2011/827.
 - (b) S.I. 2012/782.
 - (c) S.I. 2013/604.
 - (d) S.I. 2014/668.
 - (e) S.I. 2015/671.
 - (f) S.I. 2017/417.
 - (g) S.I. 2018/333.
 - (h) S.I. 2019/546.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension Scheme Order 1992 (S.I. 1992/129) ("the 1992 Order") to authorise the payments made by fire and rescue authorities between 12 November 1979 and 8 April 2019 of annual increases to certain persons who are entitled to a guaranteed minimum pension.

Section 5 of the Pensions (Increase) Act 1971 ("the 1971 Act") requires pensions authorities to increase annually pensions to which that Act applies. The 1971 Act is modified by sections 59 and 59A of the Social Security Pensions Act 1975 ("the 1975 Act"). Pensions authorities pay annual increases on pensions in accordance with the annual Pensions (Increase) Review Orders ("the annual PIROs") which are made under section 59 of the 1975 Act. The combined effect of section 59(5) of the 1975 Act, Directions by the Treasury made under section 59A of the 1975 Act and relevant provisions of the annual PIROs is that the amount of increase payable by a pensions authority under the annual PIROs is reduced by the amount equal to the rate of the GMP which is paid by the Department of Work and Pensions ("DWP").

Contracting-out of the state second pension ended from 5 April 2016, with the introduction of the single tier state pension. Schemes were expected to undertake a reconciliation exercise to check the contracting-out data held against that held by HMRC. This reconciliation exercise has been undertaken and any inconsistencies corrected. This order provides that going forward GMP related overpayments are converted to an Increased Pension Entitlement ("IPE") and therefore become part of the members entitlement under the scheme.

Regulation P3 of the 1992 Order defines a GMP-related payment as a payment made by the fire and rescue authority applying the annual PIROs as if no reduction fell to be made in relation to the person's GMP.

Regulation P4 authorises the past payment of GMP-related payments. This provision has effect from 12 November 1979 until 8 April 2019. New paragraph (2) provides that where a fire and rescue authority has made such payments to an affected pensioner, it may not recover them.

Amended regulation P5 sets out the entitlement to IPE. Although entitlement to IPE begins on 8 April 2019, the effect of the 1971 Act is that annual increases must apply to IPE from the beginning date of the pension (usually the day after the person's date of retirement). IPE is therefore defined as the amount a pension would have to be at the beginning date of a pension in order for that amount, after annual increases have been applied under the annual PIROs, to equal the GMP-related payment for the tax year 2019-2020. The effect is that for the tax year 2019-20 the IPE that the affected pensioner will receive is equal to the GMP-related payment he or she would have received were the fire and rescue authority to apply the 2009 PIRO as if no reduction fell to be made in relation to the person's GMP. Thereafter, IPE will continue to be increased in line with the annual PIROs although future PIROs will no longer be applied as if no reduction fell to be made.

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