

2019 No. 382

FIRE SERVICES

PENSIONS

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

Made - - - - *7th November 2019*

Laid before the Scottish Parliament *11th November 2019*

Coming into force - - *21st 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), sections 12 and 16 of the Superannuation Act 1972(b), sections 34(1) to (5) and (8) and 60(2) of the Fire and Rescue Services Act 2004(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 consulted such persons as they considered appropriate.

PART 1

Introductory

Citation, commencement, effect and extent

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

(2) This Order comes into force on 21 December 2019 but the provisions mentioned in paragraph (3) have effect as provided in that paragraph.

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- (a) 1947 c.41. Section 26 was repealed by section 52 and schedule 2 of the Fire and Rescue Services Act 2004 (c.21).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 Firefighters' Pension Scheme, in relation to Scotland 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 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), schedule 8 of the Superannuation Act 1972 (c.11), section 1 of the Police and Firemen's Pensions Act 1997 (c.52), schedule 25 of the Civil Partnership Act 2004 (c.33), and S.I. 1976/551. The Secretary of State's functions under section 26, in so far as they were exercisable in relation to Scotland, were devolved to Scottish Ministers by S.I. 1999/1750 and S.I. 2006/304.
- (b) 1972 c.11. 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 Section 16 is repealed by schedule 2 of the Fire and Rescue Services Act 2004, but continues to have certain effect by virtue of S.I. 2004/2306.
- (c) 2004 c.21. The functions of the Secretary of State in respect of section 34(1) to (5) and (8), and 60(2) only so far as the functions are exercisable in relation to regulations or orders made by the Scottish Ministers, as regards Scotland were transferred to the Scottish Ministers by virtue of S.I. 2005/849.

- (3) The provisions in—
- (a) article 3 has effect from 1 April 2007,
 - (b) articles 2 (insofar as necessary to give effect to articles 5, 6 and 8), 5, 6, and 8 to 12 have effect from 5 December 2005,
 - (c) article 7 has effect from 16 December 2014.
- (4) This Order extends to Scotland.

PART 2

CHAPTER 1

Firemen's Pension Scheme Order 1992

Amendments to the Firemen's Pension Scheme Order 1992

2. Schedule 2 of the Firemen's Pension Scheme Order 1992(a) in which the Firefighters' Pension Scheme is set out is amended in accordance with articles 3 to 8.

Amendments to Part B (personal awards)

3. In rule B5A (entitlement to two pensions)(b)—
- (a) in paragraph (2), for “exceeds” substitute “is lower than”,
 - (b) in paragraph (6), after “B1,” insert “B1A,” and
 - (c) in paragraph (9), for “paragraph (3)” substitute “paragraph (4)”.
4. In rule B7 (commutation – general provision)(c), after paragraph (5A), insert—
- “(5B) Notwithstanding paragraph (4) a fire and rescue authority may, having regard to—
- (a) the economical, effective and efficient management of their functions, and
 - (b) the costs likely to be incurred in the particular case,
- pay a lump sum in excess of two and a quarter times the full amount of the pension.”.

Amendments to Part C (awards on death – spouses)

- 5.—(1) In rule C1 (spouse's ordinary pension)(d)—
- (a) in paragraph (2), after “spouse” insert “or surviving civil partner”, and
 - (b) omit paragraph (2A).
- (2) In rule C4 (spouse's accrued pension) in paragraph (3)—
- (a) in sub-paragraph (a), after “spouse” insert “or surviving civil partner”, and
 - (b) omit sub-paragraph (b) and the “and” immediately preceding it.
- (3) In rule C5 (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership)—
- (a) in paragraph (2), after “spouse” insert “or surviving civil partner”, and
 - (b) omit paragraph (3).

(a) S.I. 1992/129.

(b) Rule B5A was inserted by article 2 and paragraph 1 of the schedule of S.S.I. 2008/161; there are amendments to paragraph (2) which are not relevant to this instrument; paragraph (9) was inserted by regulation 34(g) of S.S.I. 2015/141.

(c) Paragraphs (3) and (11) of rule B7 were amended by article 2 and paragraph 2(i) of the schedule of S.S.I. 2018/216.

(d) Rule C1 was relevantly amended by S.I. 2005/3228, S.S.I. 2006/342 and S.S.I. 2018/216.

(4) In rule C6 (spouse’s requisite benefit and temporary pension)(a), in paragraph (4)—

- (a) in sub-paragraph (a) omit “in the case of a surviving spouse,” and
- (b) omit sub-paragraph (b) and the “and” immediately preceding it.

(5) In rule C8 (limitation where spouses living apart)(b) in paragraph (2)—

- (a) in sub-paragraph (a), omit “in the case of a surviving spouse,” and,
- (b) omit sub-paragraph (b) and the “and” immediately preceding it.

Amendments to Part J (special cases)

6. In rule J1 (guaranteed minimum pensions)(c)—

(a) for paragraph (2)(b) substitute—

“(b) in the case of a person who dies at any time and leaves a surviving spouse or civil partner, that person is entitled to a pension at a weekly rate equal to half the deceased person’s guaranteed minimum, and”,

- (b) in paragraph (2), omit sub-paragraph (d) and the “and” immediately preceding it, and
- (c) in paragraph (4), for “, (c) or (d)” substitute “or (c)”.

Amendments to Appendix 1 to the scheme

7. Omit paragraphs 1 and 2 of Part III (provision relating to same sex couples) of Appendix 1(d).

Amendments to Appendix 3 to the scheme

8. In Appendix 3 (awards on death – spouses)—

(a) in Part III (spouse’s accrued pension)—

- (i) in paragraph 2(1), after “spouse’s” insert “, or surviving civil partner’s,” and
- (ii) in paragraph 3(1), after “spouse” insert “or surviving civil partner”, and

(b) in Part IV (pension for surviving spouse of post-retirement marriage), in paragraphs 1(1) and 2(1)(e), after “surviving spouse” insert “or surviving civil partner”.

CHAPTER 2

Firefighters’ Compensation Scheme (Scotland) Order 2006

Amendments to the Firefighters’ Compensation Scheme (Scotland) Order 2006

9. Part 3 (awards on death: spouses and civil partners) of schedule 1 of the Firefighters’ Compensation Scheme (Scotland) Order 2006(f) (in which the firefighters’ compensation scheme 2006 is set out) is amended in accordance with paragraphs 10 to 12.

Amendments to rule 1

10. In rule 1 (special award for spouse or civil partner), in paragraph (3)—

- (a) in sub-paragraph (a), after “spouse” insert “or surviving civil partner”, and

(a) Rule C6 was relevantly amended by S.I. 2005/3228.

(b) Rule C8 was relevantly amended by S.S.I. 2006/342.

(c) Rule J1 was relevantly amended by S.S.I. 2018/216.

(d) Paragraphs 1 and 2 of Part III of Appendix 1 were inserted by article 3 of S.S.I. 2015/140.

(e) Paragraphs 1(1) and 2 of Part IV of Appendix 3 were substituted by article 2 of S.S.I. 2005/566.

(f) S.S.I. 2006/338, relevantly amended by S.S.I. 2007/198, S.S.I. 2014/109 and S.S.I. 2015/143.

- (b) omit sub-paragraph (b).

Amendments to rule 3

11. In rule 3 (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership)—

- (a) in paragraph (2), after “spouse” insert “or surviving civil partner”, and
- (b) omit paragraph (3).

Amendments to rule 4

12. In rule 4 (limitation where spouse or civil partner is living apart), in paragraph (2)—

- (a) in sub-paragraph (a), after “spouse” insert “or surviving civil partner”, and
- (b) omit sub-paragraph (b) and the “and” immediately preceding it.

St Andrew’s House,
Edinburgh
7th November 2019

KATE FORBES
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firemen's Pension Scheme Order 1992 ("the 1992 Order") and the Firefighters' Compensation Scheme (Scotland) Order 2006 ("the Compensation Order").

The effect of the amendments, apart from those made by articles 3 and 4, is to bring the benefits payable to survivors of civil partnerships and same-sex marriages into line with the benefits payable to survivors of opposite-sex marriages.

The amendments made by article 3 ensure that a firefighter is not disadvantaged by the provision which allows for two pensions to be awarded, calculated separately, after a significant reduction in pay.

The amendments made by article 4 allow a fire and rescue authority to permit the commutation of a pension for a lump sum in excess of two and a quarter times the full amount of the pension.

The amendments, apart from those made by article 3 and 4, have effect from the dates from which civil partnerships or same-sex marriages were introduced. The amendments made by regulation 3 have effect from the date rule B5A was inserted into the 1992 Order. Section 12(1) of the Superannuation Act 1972, as applied by section 16(3) of that Act in relation to orders made under section 26 of the Fire Services Act 1947 (as saved by S.I. 2004/2306), accordingly permits such retrospective provision in relation to the 1992 Order. Section 34(3) of the Fire and Rescue Services Act 2004 permits retrospective provision in relation to the Compensation Order.

No business and regulatory impact assessment has been produced for this instrument as no impact on business, charities or voluntary bodies is foreseen.

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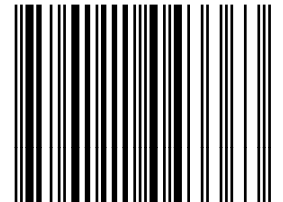
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