

2014 No. 447

FIRE AND RESCUE SERVICES, ENGLAND
PENSIONS, ENGLAND

The Firefighters' Compensation Scheme (England)
(Amendment) Order 2014

<i>Made</i> - - - -	<i>28th February 2014</i>
<i>Laid before Parliament</i>	<i>6th March 2014</i>
<i>Coming into force</i> - -	<i>1st April 2014</i>

This Order is made in exercise of the powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004^(a).

Before making this Order, and in accordance with section 34(5) of that Act, the Secretary of State consulted such persons as he considered appropriate.

The Secretary of State makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Firefighters' Compensation Scheme (England) (Amendment) Order 2014.

(2) This Order shall come into force on 1st April 2014 but the amendments made by article 2 and the following provisions of the Schedule shall have effect from 1st April 2006—

- (a) paragraph 1(2), (3), (4)(a), (b)(ii), (iii) and (iv), (5)(a)(ii) and (6);
- (b) paragraph 2(2)(a) and (c);
- (c) paragraphs 3, 4 and 5;
- (d) paragraph 7(2)(b) and (3);
- (e) paragraphs 8, 9, 10 and 11;
- (f) paragraphs 1(1), 2(1) and 7(1) so far as necessary for the purposes of sub-paragraphs (a) to (e).

(3) In this Order—

^(a) 2004 c.21. The powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of section 62 of that Act. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to the Welsh Ministers. Powers under sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in Scottish Ministers so far as they are exercisable in relation to Scotland (S.I. 2005/849).

“the Compensation Scheme” means the Scheme set out in Schedule 1 to the Firefighters’ Compensation Scheme (England) Order 2006(a);

“retained firefighter” has the meaning given in the Compensation Scheme (as amended by this Order).

Amendment of the Firefighters’ Compensation Scheme (England) Order 2006

2. Schedule 1 to the Firefighters’ Compensation Scheme (England) Order 2006 is amended in accordance with the Schedule to this Order.

Transitional provisions

3.—(1) The amendments made by article 2 and paragraphs 6 (award for or in relation to a retained or volunteer firefighter) and 7 (prevention of duplication) of the Schedule to this Order shall not have effect in relation to a person in respect of whom a determination or decision relevant to whether death or permanent disablement has been occasioned by a qualifying injury (coming within the meaning of rule 7 of Part 1 of the Compensation Scheme) has been made before the coming into force of this Order.

(2) The amendments made by article 2 and paragraphs 6 and 7 of the Schedule to this Order shall not have effect in relation to a person who has been in continuous employment as a retained firefighter since 5th April 2006 and has sustained an injury in the performance of his duties as a firefighter before the coming into force of this Order where it is subsequently determined that that injury is a qualifying injury (coming within the meaning of rule 7 of Part 1 of the Compensation Scheme) and that he is permanently disabled as a result of that injury.

(3) In a case to which paragraph (1) or (2) applies and in relation to the provisions mentioned in that paragraph, the provisions of the Compensation Scheme, in the form in which they existed immediately before the coming into force of this Order, shall continue to have effect in relation to such a person.

Signed by authority of the Secretary of State for Communities and Local Government

Brandon Lewis

Parliamentary Under Secretary of State

Department for Communities and Local Government

28th February 2014

SCHEDULE

Article 2

Amendments to the Firefighters’ Compensation Scheme (England) 2006

Amendments to Part 1 (general provisions)

1.—(1) Part 1 is amended as follows.

(2) In rule 2(1) (interpretation)—

(a) for the definition of “pensionable pay” substitute—

““pensionable pay”—

(a) in relation to a person who is a member of the 1992 Scheme, shall be construed in accordance with rule G1 of that Scheme;

(b) in relation to a person who is a member of the 2006 Scheme, shall be construed in accordance with rule 1 of Part 11 of that Scheme;

(a) S.I. 2006/1811 amended by S.I. 2006/3434.

- (c) in the case of a person who is not a member of either scheme, shall be construed in accordance with rule 11 of this Part;”;
- (b) after the definition of “regular firefighter” insert—
 - ““relevant service”, except in rule 1 of Part 7 (servicemen) and rule 1 of Part 7A (reservists), means service which either was, or would, but for an election under rule G3 of the 1992 Scheme or rule 5 of Part 2 of the 2006 Scheme or a failure to elect under rule G2A(a) of the 1992 Scheme or rule 4 of Part 11 of the 2006 Scheme, have been reckonable as pensionable service;”
- (c) for the definitions of “retained firefighter” and “retained or volunteer firefighter” substitute—
 - ““retained firefighter” means a person who is employed by an authority—
 - (a) as a retained firefighter, but not as a regular firefighter or a volunteer firefighter,
 - (b) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),
 - (c) otherwise than in a temporary capacity, and
 - (d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that he receives;”;
- (d) after the definition of “surviving spouse” insert—
 - ““volunteer firefighter” means a person who is employed by an authority—
 - (a) as a volunteer firefighter but not as a regular firefighter or a retained firefighter,
 - (b) on terms under which he is, or may be, required to engage in fire-fighting or may be required to perform other duties appropriate to his role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),
 - (c) otherwise than in a temporary capacity, and
 - (d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that he receives;”.
- (3) In rule 3—
 - (a) for the heading substitute—
 - “**Exclusive application to regular and retained firefighters**”;
 - (b) in paragraph (1) for “regular firefighters” substitute “regular and retained firefighters”;
 - (c) in paragraph (2) for “regular firefighter” substitute “regular or retained firefighter”.
- (4) In rule 6 (reckoning of service for purpose of awards)—
 - (a) in paragraph (2) for “regular firefighter” substitute “regular or retained firefighter”.
 - (b) in paragraph (3)—
 - (i) for “retained or volunteer firefighter” substitute “volunteer firefighter”;
 - (ii) omit “and Part 2 of Schedule 2”;
 - (iii) after “any period of service” insert “as a retained firefighter or”
 - (iv) for “pensionable service” substitute “relevant service”.
- (5) In rule 7 (qualifying injury)—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (b) omit “retained or”;

(a) Rule G2A was inserted by S.I. 2004/1912 and amended by 2005/2980.

- (ii) for “regular firefighter” substitute “regular or retained firefighter”;
- (b) in paragraph (3) omit the words—
 - (i) “and paragraph (4) of rule 3 of Part 10”; and
 - (ii) “retained or”.
- (6) After rule 10 (effective date of retirement), insert—

“Determining pensionable pay in certain cases

11.—(1) Where an award is to be calculated in respect of a person who is not, or was not, a member of the 1992 Scheme or the 2006 Scheme, the definition of “pensionable pay” shall be construed in accordance with—

- (a) rule G1 of the 1992 Scheme in the case of a person who elected not to pay pension contributions under rule G3 of that Scheme;
- (b) rule 1 of Part 11 of the 2006 Scheme in the case of a person who elected not to pay pension contributions under rule 5 of Part 2 of that Scheme;
- (c) rule 1 of Part 11 of the 2006 Scheme, where an election had been made at different times under both schemes.

(2) Where, in accordance with paragraph (1), the definition of pensionable pay is to be construed in the case of a person in accordance with the 1992 Scheme, his award shall be calculated on the basis of the pay which would have been his average pensionable pay if he had not made an election.

(3) Where, in accordance with paragraph (1), the definition of pensionable pay is to be construed in the case of a person in accordance with the 2006 Scheme, his award shall be calculated on the basis of the pay which would have been his final pensionable pay if he had not made an election.

(4) For the purposes of calculating a retained firefighter’s pensionable pay (whether or not that person is or was a member of the 2006 Scheme), a fire and rescue authority shall determine the period of the person’s service from their records.

(5) Where an authority are not able to determine the period of the person’s service from their records, the person, or any other person entitled to an award under this Scheme, may provide the authority with documents to assist them to determine the person’s period of service.

(6) Where an authority are not able to determine the period of the person’s service and the authority does not hold records of that person’s pay for that period, and the necessary documents cannot be provided in accordance with paragraph (5), the authority may estimate the person’s pensionable pay for that period from the records which they hold and may in particular estimate this on the basis of the average of recent pay data for retained firefighters at the same station or stations at that at which the person was based for the relevant period.”.

Amendments to Part 2 (injury awards and duty-related compensation)

- 2.**—(1) Part 2 is amended as follows.
- (2) In rule 2 (part-time, retained and volunteer firefighters)—
 - (a) in paragraph (1) for “this Part” substitute “rule 1” and omit “by virtue of which his pensionable service is reckonable”;
 - (b) in paragraph (2)(a) omit “retained or”;
 - (c) in paragraph (2)(b) for “this Part” substitute “rule 1”;
 - (d) after paragraph (2) insert—
 - “(3) Where a person—
 - (a) is employed as a retained firefighter; and

(b) is entitled to an award under rule 1,
his award shall be calculated in accordance with Part 3 of Schedule 1.”.

Amendments to Part 3 (awards on death: spouses and civil partners)

3.—(1) Part 3 is amended as follows.

(2) In rule 1 (special award for spouse or civil partner) in paragraph (1) and paragraph (3) for “regular firefighter” in each place where it occurs substitute “regular or retained firefighter”.

(3) In rule 2 (augmented award for spouse or civil partner), in paragraph (1), for “regular firefighter” substitute “regular or retained firefighter”.

Amendments to Part 4 (awards on death: children)

4.—(1) Part 4 is amended as follows.

(2) In rule 1(1) (child’s special allowance) and rule 2(1) (child’s special gratuity) for “regular firefighter” in each place where it occurs substitute “regular or retained firefighter”.

(3) In rule 3(1) (child’s special allowance or gratuity: limitations) for “be a regular firefighter” substitute “be either a regular or retained firefighter”.

Amendments to Part 5 (awards on death: additional provisions)

5. In Part 5 in rule 1(1) (adult dependent relative’s special pension), rule 2(1)(a) (dependent relative’s gratuity) and rule 5(1)(a) (increase of pensions and allowances during first 13 weeks) for “regular firefighter” in each place where it occurs substitute “regular or retained firefighter”.

Amendments to Part 8 (special cases)

6. In Part 8 in rule 2 (award for or in relation to a retained or volunteer firefighter)—

- (a) in the heading to the rule omit “retained or”;
- (b) in paragraph (1)(a) omit “retained firefighter or”;
- (c) in paragraphs (5)(b) and (10)(a) and (b) omit “retained or” in each place where it occurs.

Amendments to Part 10 (payment of awards and financial provisions)

7.—(1) Part 10 is amended as follows.

(2) In rule 3 (prevention of duplication)—

- (a) in paragraph (4) for sub-paragraph (a)(ii) substitute—

“(ii) under rule 1, 1A, 2 or 3 of Part 3 of the 2006 Scheme to an ordinary, special member’s ordinary, ill health or deferred, or”;

- (b) in paragraph (6) for “regular firefighter” substitute “regular or retained firefighter”.

(3) In rule 4 (prevention of duplication: other injury awards for persons who are both regular and retained firefighters)—

- (a) in paragraph (2)—

- (i) for “both a regular firefighter and” substitute “a volunteer firefighter and a retained firefighter or as a regular firefighter”;

- (ii) omit the words in sub-paragraph (a);

- (iii) in sub-paragraph (b)(i) after “regular firefighter” insert “or a retained firefighter”;

- (iv) in sub-paragraph (b)(ii) for “retained firefighter” substitute “volunteer firefighter”;

- (b) in paragraph (3)—

- (i) after “regular firefighter” insert “or a retained firefighter”;

- (ii) for “retained firefighter” substitute “volunteer firefighter”;
- (c) in paragraph (4) for “retained firefighter” substitute “volunteer firefighter”.
- (4) In rule 5(a) (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters) at the end of paragraph (3) insert—
 - “(g) a survivor’s pension under rule 1 of Part 4 of the 2006 Scheme,
 - (h) a survivor’s bereavement pension under rule 4 of Part 4 of the 2006 Scheme,
 - (i) a child’s pension under rule 6 of Part 4 of the 2006 Scheme,
 - (j) a child’s bereavement pension under rule 9 of Part 4 of the 2006 Scheme,
 - (k) a death grant under rule 1 of Part 5 of the 2006 Scheme,
 - (l) a post-retirement death grant under rule 2 of Part 5 of the 2006 Scheme.”.

Amendments to Schedule 1 (injury awards and duty-related compensation)

- 8.**—(1) Schedule 1 is amended as follows.
- (2) In Part 1 (calculation of awards for full-time service) omit sub-paragraph (2) of paragraph 1.
 - (3) In Part 2 (calculation of awards for part-time service)—
 - (a) in paragraph 1 omit “by virtue of which his pensionable service is reckonable”;
 - (b) in paragraph 2(1) in the definitions of “B”, “C” and “D”, for “pensionable service” substitute “relevant service” in each place where the words occur.
 - (4) In Part 3 (calculation of awards for retained or volunteer service) for “paragraph 1(2)” substitute “paragraph 1” and for “pensionable service” substitute “relevant service”.

Amendments to Schedule 2 (awards for spouses and civil partners)

- 9.** In Part 1 (special pension) of Schedule 2—
- (a) in paragraph 1 for “Subject to paragraph 2” substitute “Subject to paragraphs 2 and 3”;
 - (b) in paragraph 2, in the definitions of “B”, “C” and “D”, for “pensionable service” substitute “relevant service” in each place where the words occur;
 - (c) after paragraph 2, insert —

“**3.**—(1) Where the deceased was employed as a retained firefighter but not as a regular firefighter at the time of his death, the amount of special pension shall be calculated in accordance with the formula—

$$A \times (B / C)$$

where—

A is the amount calculated under paragraph 1 as if the final pensionable pay was the pay the deceased would have received had he been a whole-time employee of a fire and rescue authority;

B is the period in years of his pensionable retained service; and

C is the period in years of his relevant service.

(2) Where the person was a member of the 2006 Scheme, neither B nor C shall exceed 40 years.”.

Amendments to Schedule 3 (awards on death: children)

- 10.** In Part 1 (child’s special allowance) of Schedule 3—
- (a) in paragraph 1 for “Subject to paragraph 4” substitute “Subject to paragraphs 4 and 5”;

(a) Rule 5 was substituted by S.I. 2006/3434.

- (b) in paragraph 4(1) omit “which is reckonable as pensionable service.”;
- (c) after paragraph 4 insert—

“5. Where the deceased was employed as a retained firefighter but not as a regular firefighter at the time of his death, the amount of the special allowance shall be calculated in accordance with the formula—

$$A \times (B / C)$$

where—

A is the amount calculated under paragraphs 1 to 3 of this Part as if the final pensionable pay was the pay the deceased would have received had he been a whole-time employee of a fire and rescue authority;

B is the period in years of his pensionable retained service;

C is the period in years of his relevant service.”.

Amendments to Schedule 4 (awards on death: additional provisions)

11. In Part 1 (adult dependent relative’s special pension) of Schedule 4—

- (a) in paragraph 1, for “Subject to paragraphs 2 and 3” substitute “Subject to paragraphs 2, 3 and 4”;
- (b) in paragraph 3 omit “which is reckonable as pensionable service.”;
- (c) after paragraph 3 insert—

“4. Where the deceased was employed as a retained firefighter but not as a regular firefighter at the time of his death, paragraphs 1 and 2 shall apply with the modification that for any reference to his final pensionable pay there shall be substituted the product of the formula—

$$A \times (B / C)$$

where—

A is the amount of pay the deceased would have received had he been a whole-time employee of a fire and rescue authority;

B is the period in years of his pensionable retained service;

C is the period in years of his relevant service.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Firefighters’ Compensation Scheme (England) Order 2006 in which is set out the compensation scheme for firefighters and dependants of firefighters in England (“the Compensation Scheme”).

Article 3 of the Order contains transitional provisions in relation to the amendments made by article 2 and paragraphs 6 and 7 of the Schedule to this Order – they provide for the Compensation Scheme in its unamended form to continue to apply in certain circumstances.

The amendments made to rule 2 (award for or in relation to a retained or volunteer firefighter) of Part 8 (special cases) remove the right of a retained firefighter who was employed as a retained firefighter before 6th April 2006 to an injury award calculated as though he were a wholetime firefighter from the date of commencement of the Order. These changes are consequential on changes to pension arrangements for retained firefighters made by the Firefighters’ Pension Scheme (England) (Amendment) Order 2014 (S.I. 2014/445).

The amendments to rule 6 (reckoning of service for purpose of awards) and rule 7 (qualifying injury) of Part 1 (general provisions) and those to rule 4 of Part 10 are consequential on the amendments to rule 2.

The various amendments which substitute “regular or retained firefighters” for a reference to “regular firefighter” correct the general terms of the Compensation Scheme which were intended to apply to retained firefighters who took up employment as a retained firefighter after 5th April 2006. The effect of the amendments made to rule 2 of Part 8 by this Order is that the general provisions of the Compensation Scheme apply to all retained firefighters who do not fall within the transitional provisions.

The amendments to Part 1 (special pension) of Schedule 2 (awards for spouses and civil partners), Part 1 (child’s special allowance) of Schedule 3 (awards on death: children) and Part 1 (adult dependent relative’s special pension) of Schedule 4 (awards on death: additional provisions) insert a formula to calculate an award in respect of retained firefighters.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen and the impact on the public sector is minimal.

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