

SCHEDULE 1

AMENDMENT OF THE FIREFIGHTERS' PENSION (WALES) SCHEME (WALES ONLY)

60. After Part L, insert the following Part—

“PART LA

FIREFIGHTERS' PENSION FUND

Establishment, maintenance and operation of Firefighters' Pension Fund, etc.

LA1.—(1) For the purposes of this Scheme, and in connection with rights acquired and liabilities incurred under the 1973 Scheme or previous Firemen's Pension Schemes and transferred to a fire and rescue authority, each fire and rescue authority shall establish and maintain, in accordance with proper practices, a pension fund, which shall be known as their Firefighters' Pension Fund (in this Part referred to as the FPF).

(2) Without prejudice to the generality of paragraph (1), there shall be credited to the FPF or, where a transfer is made to the FPF from any other fund maintained by the authority, credited to the FPF and debited to that other fund—

- (a) sums receivable from firefighters in respect of periods treated as reckonable by virtue of paragraphs (3) or (5) of rule F2 (current service);
- (b) sums receivable under rule F7 (receipt of transfer value);
- (c) sums receivable from Scottish or English fire and rescue authorities under provisions of the Firefighters' Pension Scheme as it has effect in Scotland or England equivalent to rule F8 (transfer payments between fire and rescue authorities); and
- (d) the amount of the authority's annual contributions under paragraph (3) of rule G2 (pension contributions).

(3) Without prejudice to the generality of paragraph (1), there shall be payable out of the FPF or, if a transfer is made from the FPF to any other fund maintained by the authority, debited to the FPF and credited to that other fund—

- (a) sums payable under rule B6(3) (aggregate of employer's contributions paid under rule G2(3));
- (b) awards payable under any provision of this Scheme (including the commuted portion of a pension to which rule B7 (commutation: general provision) applies);
- (c) sums payable under rule F8 (transfer payments to Scottish and English fire and rescue authorities);
- (d) sums payable under rule F9 (payment of transfer values) by way of transfer values or cash or part cash equivalents.

(4) Every amount paid or repaid to or by an authority under this Part shall be credited or, as the case may be, debited, to their FPF.

(5) In this Part—

- (a) references to the total amount payable out of an authority's FPF do not include references to any amount which the Assembly requires the authority to pay to it under any of rules LA5 to LA8; and

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- (b) references to the total amount credited to the authority's FPF do not include references to any amount which the Assembly pays to the authority for crediting to their FPF under any of rules LA5 to LA8.

Special payments and transfers into Firefighters' Pension Fund

LA2.—(1) Each fire and rescue authority shall make transfers into their FPF in accordance with paragraphs (2) to (8).

(2) In respect of each firefighter employed by the authority who retires on or after 1st April 2005 and before 1st April 2006 with an entitlement to immediate payment of an ill-health award under rule B3 (ill-health award), the authority shall, as soon as reasonably practicable after the date on which the Firefighters' Pension (Wales) Scheme (Amendment) Order 2007 comes into force, transfer into the FPF an amount equal to that firefighter's average pensionable pay.

(3) In respect of each firefighter employed by the authority who retires on or after 1st April 2006 with an entitlement to immediate payment of a higher tier ill-health award under rule B3, the authority shall transfer into the FPF such amount as shall be determined and notified to them by the Assembly as the higher tier ill-health charge applicable in respect of that pension.

(4) In respect of each firefighter employed by the authority who retires on or after 1st April 2006—

- (a) with an entitlement to immediate payment of a lower tier ill-health award under rule B3 (ill-health awards); and
- (b) with no entitlement to a higher tier ill-health award,

the authority shall transfer into the FPF such amount as shall be determined and notified to them by the Assembly as the lower tier ill-health charge applicable in respect of that pension.

(5) The amount to be transferred under paragraph (3) or (4) shall be transferred in three equal instalments.

(6) The first instalment shall be transferred—

- (a) on the date on which the employee retires; or
- (b) if the employee retired before the date on which the Firefighters' Pension (Wales) Scheme (Amendment) Order 2007 comes into force, as soon as reasonably practicable after the date on which it comes into force.

(7) The second instalment shall be transferred on 1st April in the financial year that follows the financial year in which the first instalment was transferred.

(8) The third instalment shall be transferred on 1st April in the financial year that follows the financial year in which the second instalment was transferred.

Transfer from Firefighters' Pension Fund

LA3.—(1) Where, in consequence of a review under rule K1 (review of ill-health and certain deferred pensions)—

- (a) a higher tier ill-health pension is cancelled before all the instalments of the higher tier ill-health charge in respect of that pension have been transferred in accordance with rule LA2; and
- (b) a lower tier ill-health pension continues to be paid,

the amount referred to in paragraph (2) shall be transferred from the FPF to any other fund maintained by the authority.

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- (2) The amount is an amount equal to the difference between—
 - (a) the aggregate of such instalments of the higher tier ill-health charge as have been transferred in accordance with rule LA2; and
 - (b) the aggregate amount that would have been transferred if—
 - (i) the lower tier ill-health charge had always applied in respect of the pension, and
 - (ii) instalments of that charge had been transferred on the dates on which instalments of the higher tier ill-health charge were transferred.
- (3) For the purposes of ascertaining the amount to be transferred in accordance with paragraph (2), the fire and rescue authority shall request the Assembly to determine the amount of the notional lower tier ill-health charge in respect of the pension concerned.
- (4) Where a person declines an offer of employment under paragraph (2)(b) of rule K1A (consequences of review) and does not again take employment with a Welsh fire and rescue authority—
 - (a) rule LA2(3) or (4) (as the case may be) shall be disregarded in his case (to the extent that it remains to be complied with); and
 - (b) the authority which made the offer—
 - (i) shall not make any transfer into the FPF in respect of him as regards any time after the date on which they receive notice that the offer has been rejected; and
 - (ii) shall transfer from the FPF to any other fund maintained by them an amount equal to the aggregate of the instalments that have been transferred to the FPF in respect of the pension that has been terminated.
- (5) Where—
 - (a) a higher tier ill-health pension or a lower tier ill-health pension is wholly and permanently withdrawn under rule K5 (withdrawal of pension on conviction of certain offences); and
 - (b) the former recipient of that pension does not again take employment with a Welsh fire and rescue authority,rule LA2(3) or (4) (as the case may be) shall be disregarded in his case (to the extent that it remains to be complied with); and the authority shall transfer from the FPF to any other fund maintained by them an amount equal to the aggregate of the instalments that have been transferred to the FPF in respect of the pension that has been terminated.

Excess amounts — information

LA4.—(1) Beginning with the financial year ending on 31st March 2007, a fire and rescue authority shall, in relation to each financial year, send the following information in writing to the Assembly—

- (a) the total amount that the authority estimate will be payable out of their FPF in that year;
- (b) the total amount that the authority estimate will be credited to their FPF in that year;

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- (c) the authority's un-audited statement of accounts for that year, prepared and approved in accordance with regulations under section 39 of the Public Audit (Wales) Act 2004⁽¹⁾;
 - (d) the authority's statement of accounts for that year, as it is after the authority's auditor issues his certificate and opinion, including or together with that certificate and opinion;
 - (e) the total amount payable out of the authority's FPF in that year; and
 - (f) the total amount credited to the authority's FPF in that year.
- (2) In relation to the financial year ending on 31st March 2007, the authority shall send the information referred to in sub-paragraphs (a) and (b) of paragraph (1) to the Assembly in September 2006 ("the initial estimate").
- (3) In relation to each financial year ending on or after 31st March 2008, the authority—
- (a) shall send the information referred to in sub-paragraphs (a) and (b) of paragraph(1) to the Assembly in September in the financial year before the year in question ("the estimate"); and
 - (b) if the authority revises the information referred to in those sub-paragraphs after they send the estimate to the Assembly, may send that revised information to the Assembly in September during the year in question ("the revised estimate").
- (4) The authority shall send the information referred to in sub-paragraphs (c), (e) and (f) of paragraph (1) to the Assembly in July in the financial year following the year in question ("the un-audited information").
- (5) The authority shall send to the Assembly as soon as reasonably practicable after the authority's auditor issues his certificate and opinion on the authority's accounts for the year in question ("the audited information")—
- (a) the information referred to in sub-paragraph (d) of paragraph (1); and
 - (b) if the authority revises the information referred to in sub-paragraphs (e) and (f) of paragraph (1) after it has sent the un-audited information to the Assembly, that information as revised.
- (6) For the purposes of this rule, the auditor issues his certificate and opinion when, in accordance with section 23 of the Public Audit (Wales) Act 2004—
- (a) he enters on the authority's statement of accounts for the relevant year—
 - (i) a certificate that he has completed the audit in accordance with that Act, and
 - (ii) his opinion on the statement; or
 - (b) where he makes a report to the authority under section 22 of that Act at the conclusion of the audit, he includes the certificate and opinion referred to in subparagraph (a) in that report instead of making an entry on the statement.

Excess amounts — estimated deficits

LA5.—(1) Where, having taken into account the initial estimate or, as the case may be, the estimate, and any other relevant information available to it, it appears to the Assembly that the total amount likely to be payable out of a fire and rescue authority's FPF in the year in question will exceed the total amount likely to be credited to the authority's FPF in that year, the Assembly shall pay to the authority an amount equal to 80 per cent of the likely deficit.

(1) 2004 c. 23. See regulations 7 and 9 of the Accounts and Audit (Wales) Regulations 2005 (S.I.2005/368)(W.34).

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(2) Subject to paragraph (3), where, having taken into account any revised estimate and any other relevant information available to it, it appears to the Assembly that—

(a) the total amount likely to be payable out of the authority's FPF in the year in question will exceed the total amount likely to be credited to the authority's FPF in that year; and

(b) 80 per cent of the likely deficit is more than—

(i) the amount paid or payable by the National Assembly to the authority by virtue of paragraph (1) in relation to the relevant year; or

(ii) where no such amount was paid or payable by the National Assembly, zero, it may pay to the authority such amount as it thinks fit.

(3) The aggregate of the amounts paid to an authority under paragraphs (1) and (2) in relation to a particular year shall not exceed 80 per cent of the authority's likely deficit for that year.

(4) Where the Assembly pays an amount to the authority under paragraph (2), any amount paid or payable to the Assembly in relation to the year in question under rule LA6(1) shall not be payable and, if already paid, the Assembly shall repay it to the authority.

(5) An amount payable to the authority under paragraph (1) shall be paid—

(a) where the year in question ends on 31st March 2007, on or before that date; where the year in question ends on or after 31st March 2008, in July in the year in question.

(6) Any amount payable or repayable by the Assembly to an authority under paragraph (2) or (4) shall be paid or repaid before the end of the year in question.

Excess amounts — estimated surpluses

LA6.—(1) Where, having taken into account the initial estimate or, as the case may be, the estimate, and any other relevant information available to it, it appears to the Assembly that the total amount likely to be credited to a fire and rescue authority's FPF in the year in question will exceed the total amount likely to be payable out of their FPF in that year, the Assembly shall require the authority to pay to it an amount equal to 80 per cent of the likely surplus.

(2) Subject to paragraph (3), where, having taken into account any revised estimate and any other relevant information available to it, it appears to the Assembly that—

(a) the total amount likely to be credited to the authority's FPF in the year in question will exceed the total amount likely to be payable out of the authority's FPF in that year; and

(b) 80 per cent of the difference between those total amounts is more than—

(i) the amount paid or payable by the authority to it under paragraph (1) in relation to the year in question; or

(ii) where no such amount was paid or payable by the authority, zero, the Assembly may require the authority to pay to the Assembly such amount as the Assembly may by notice specify.

(3) The aggregate of the amounts paid to the Assembly under paragraphs (1) and (2) in relation to a particular year shall not exceed 80 per cent of the authority's likely surplus for that year.

(4) Where the Assembly requires the authority to pay an amount to the Assembly by virtue of paragraph (2), any amount paid or payable by the Assembly to the authority under

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rule LA5(1), shall not be payable and, if already paid, the authority shall repay it to the Assembly.

(5) The Assembly shall give to the authority, on or before 3rd March in the year in question, written notice of the amount of any payment that the Assembly requires the authority to make under paragraph (1) or (2).

(6) An amount payable or repayable by the authority to the Assembly under paragraph (1), (2) or (4) shall be paid or repaid in March in the year in question.

Excess amounts — actual deficits

LA7.—(1) Where, having taken into account the un-audited information and any other relevant information available to the Assembly, it appears to the Assembly that the total amount likely to be payable out of a fire and rescue authority’s FPF in the year in question exceeds the total amount likely to be credited to the authority’s FPF in that year—

- (a) where the likely deficit (“the un-audited deficit”) exceeds the total of any amounts paid or payable to the authority in relation to that year under rule LA5(1) or (2) (“the LA5 total”), the Assembly shall pay to the authority the amount of the un-audited deficit less the LA5 total;
- (b) where the un-audited deficit is less than the LA5 total, the amount of the LA5 total less the un-audited deficit shall not be payable under rule LA5(1) or (2) and, if already paid, the authority shall repay that amount to the Assembly;
- (c) where no amount was paid or payable by the Assembly to the authority in relation to the year in question under rule LA5(1) or (2), it shall pay to the authority the amount of the un-audited deficit; and
- (d) any amount paid or payable to the Assembly in relation to that year under rule LA6(1) or (2), shall not be payable and, if already paid, the Assembly shall repay it to the authority.

(2) Where, having taken into account the audited information and any other relevant information available to him, it appears to the Assembly that the total amount paid or payable out of a fire and rescue authority’s FPF in the year in question exceeds the total amount credited or to be credited to their FPF in that year—

- (a) where the difference between those total amounts (“the audited deficit”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to the authority in relation to that year under paragraph (1)(a) or (c) or rule LA5(1) or (2) (“the un-audited total”), the Assembly shall pay to the authority the amount of the audited deficit less the un-audited total;
- (b) where the audited deficit is less than the un-audited total, the amount of the un-audited total less the audited deficit shall not be payable under paragraph (1) (a) or (c) or rule LA5(1) or (2) and, if already paid, the authority shall repay it to the Assembly;
- (c) where no amount was paid or payable by the Assembly to the authority in relation to the year in question under paragraph (1)(a) or (c) or rule LA5(1) or (2), it shall pay to the authority the amount of the audited deficit; and
- (d) any amount paid or payable to the Assembly in relation to the year in question under rule LA6(1) or (2) or rule LA8(1)(a) or (c), shall not be payable and, if already paid, the Assembly shall repay it to the authority.

(3) An amount payable or repayable by the Assembly to an authority, or vice versa, under paragraph (1), shall be paid or repaid in July in the financial year following the year in question (“the second year”).

(4) An amount payable or repayable by the Assembly to an authority, or vice versa, under paragraph (2), shall be paid or repaid in July in the financial year following the second year.

Excess amounts — actual surpluses

LA8.—(1) Where, having taken into account the un-audited information and any other relevant information available to the Assembly, it appears to the Assembly that the total amount credited to a fire and rescue authority's FPF in the year in question exceeds the total amount paid out of the authority's FPF in that year—

- (a) where the difference between those total amounts (“the un-audited surplus”) exceeds the total of any amounts paid or payable to the Assembly by the authority in relation to that year under rule LA6(1) or (2) (“the LA6 total”), the Assembly shall require the authority to pay to it the amount of the un-audited surplus less the LA6 total;
- (b) where the un-audited surplus is less than the LA6 total, the amount of the LA6 total less the un-audited surplus shall not be payable under rule LA6(1) or (2) and, if already paid, the Assembly shall repay it to the authority;
- (c) where no amount was paid or payable to the Assembly by the authority in relation to the year in question under rule LA6(1) or (2), it shall require the authority to pay to it the amount of the un-audited surplus; and
- (d) any amount paid or payable by the Assembly to the authority in relation to that year under rule LA5(1) or (2), shall not be payable and, if already paid, the authority shall repay it to the Assembly.

(2) Where, having taken into account the audited information and any other relevant information available to it, it appears to the Assembly that the total amount credited to a fire and rescue authority's FPF in the year in question exceeds the total amount payable out of the authority's FPF in that year—

- (a) where the difference between those total amounts (“the audited surplus”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to the Assembly by the authority in relation to that year under paragraph (1)(a) or (c) or rule LA6(1) or (2) (“the un-audited LA6 total”), the Assembly shall require the authority to pay to it, out of their FPF, the amount of the audited surplus less the un-audited LA6 total;
- (b) where the audited surplus is less than the un-audited LA6 total, the amount of the un-audited LA6 total less the audited surplus shall not be payable under paragraph (1)(a) or (c) or rule LA6(1) or (2) and, if already paid, the Assembly shall repay it to the authority;
- (c) where no amount was paid or payable to the Assembly by the authority in relation to the year in question under paragraph (1)(a) or (c) or rule LA6(1) or (2), the Assembly shall require the authority to pay to it the amount of the audited surplus; and
- (d) any amount paid or payable by the Assembly to the authority in relation to that year under rule LA5(1) or (2) or rule LA7(1)(a) or (c) shall not be payable and, if already paid, the authority shall repay it to the Assembly.

(3) The Assembly shall give to the authority, on or before 3rd July in the financial year after the year in question (“the second year”), written notice of the amount of the payment that the Assembly requires the authority to make under paragraph (1)(a) or (c).

(4) An amount payable or repayable by the authority to the Assembly, or vice versa, under paragraph (1), shall be paid or repaid in July in the second year.

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(5) The Assembly shall give to the authority, on or before 3rd July in the financial year that is the second financial year after the year in question (“the third year”), written notice of the amount of any payment that the Assembly requires the authority to make under paragraph (2)(a) or (c).

(6) An amount payable or repayable by the authority to the Assembly, or vice versa, by virtue of paragraph (2), shall be paid or repaid in July in the third year.

Duty to provide information

LA9.—(1) A fire and rescue authority shall provide the Assembly with such information relevant to the exercise of the Assembly’s functions under this Part as it may, by written notice to the authority, require.

(2) An authority shall respond to a request under paragraph (1) within such period as the Assembly shall specify in its notice under that paragraph, or such longer period as the Assembly may in any particular case allow.

Duty to have regard to guidance

LA10. A fire and rescue authority shall have regard to such guidance as may be issued by the Assembly from time to time for the purposes of this Part.”.