SCOTTISH STATUTORY INSTRUMENTS

2004 No. 385

FIRE SERVICES

SUPERANNUATION

PENSIONS

The Firemen's Pension Scheme Amendment (Scotland) Order 2004

Made - - - -	*9th September 2004*
Laid before the Scottish Parliament - - - -	*9th September 2004*
Coming into force - -	*1st October 2004*

The Scottish Ministers, in exercise of the powers conferred by section 26 of the Fire Services Act 1947(**1**), sections 12 and 16 of the Superannuation Act 1972(**2**) and of all other powers enabling them in that behalf, and after consultation with the Scottish Central Fire Brigades Advisory Council, hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Firemen's Pension Scheme Amendment (Scotland) Order 2004.

(2) This Order shall come into force on 1st October 2004, except that the amendments that relate to, or are incidental to–

(a) rules C1 and C6 shall have effect from 6th April 1997;

(b) rules F2A, G1 and G2A, in so far as they relate to maternity leave, shall have effect from 23rd June 1994;

(c) rules F2A, G1 and G2A, in so far as they relate to adoption or paternity leave, shall have effect from 8th December 2002; and

(d) rule I3 and paragraphs (4) and (5) of rule J4 shall have effect from 1st March 1992.

(**1**) 1947 c. 41; to which there are amendments not relevant to this Order. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 ("the 1999 Order"), article 2 and Schedule 1, (S.I.1999/1750); approval of the Treasury is not required by virtue of the 1999 Order, article 2.

(**2**) 1972 c. 11; section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1997.

(3) This Order extends to Scotland only.

Amendment of the Firemen's Pension Scheme

2. The Firemen's Pension Scheme set out in Schedule 2 to the Firemen's Pension Scheme Order 1992(**3**) shall be amended in accordance with the Schedule to this Order.

St Andrew's House, Edinburgh
9th September 2004

TAVISH SCOTT
A member of the Scottish Executive

(**3**) S.I. 1992/129 as amended by S.I. 1997/2309 and 2851, 1998/1010 and S.S.I. 2001/310

SCHEDULE

Article 2

AMENDMENTS TO THE FIREMEN'S PENSION SCHEME

Part A: General provisions and retirement

1. In rule A7 (reckoning of service for purposes of award), after paragraph (4) insert–

"(5) Subject to rule B13 and Part VIA of Schedule 2, any period of service as a part-time member of a brigade shall be treated as service as a whole-time member of a brigade when calculating a person's pensionable service.".

2. In rule A8 (aggregate pension contributions for purposes of awards), after paragraph (1)(a), insert–

"(aa) all payments made by him in accordance with an election under rule G2A (optional pension contributions during maternity and adoption leave),".

3. In rule A9 (qualifying injury), in paragraph (2), for "part-time" substitute "retained or volunteer".

4. In rule A10 (disablement), after paragraph (1), insert–

"(1A) In determining whether a disablement is permanent, a fire authority shall have regard to whether the disablement will continue until the age at which the person would otherwise be required to retire in accordance with rule A13.".

5. In rule A13 (compulsory retirement on account of age), for paragraph (1) substitute–

"(1) This rule applies to every regular firefighter.".

6. In rule A14 (compulsory retirement on grounds of efficiency of brigade)–

(a) for "A whole-time member of a brigade" substitute "A regular firefighter";

(b) omit paragraph (a); and

(c) in paragraph (c), after "under rule G3" insert "or a failure to make an election under rule G2A".

Part B: Personal awards

7. In rule B5 (deferred pension), for paragraph (1)(a) substitute–

"(a) has an earlier period of service as a regular firefighter which, disregarding breaks in service of not more than a month, is continuous and which, after deducting from it–

(i) any period during which an election under rule G3 not to pay contributions had effect, and

(ii) any period of maternity or adoption leave which does not count as pensionable service as a result of rules F2A or G2A,

and aggregating the remainder with his pensionable service, amounts to 2 years or more, or".

8. In rule B7 (commutation – general provision), in paragraph (5)(a), after "years'" insert "pensionable".

9. In rule B9 (allocation)–

(a) in paragraph (6), for "as to his good health" substitute "that he has a normal life expectancy";

(b) in paragraph (7), omit sub-paragraph (a);

(c) omit paragraph (9);

(d) in paragraph (12), for "even if" substitute "unless";

(e) after paragraph (12), insert–

"(12A) Where–

(a) after 1st October 2004, a person becomes entitled to be paid a pension which is reduced under paragraph (12); and

(b) the beneficiary dies after that pension becomes payable,

from the date of the beneficiary's death the pension shall no longer be reduced by the allocated portion.";

(f) in paragraph (13), omit the word "and" at the end of sub-paragraph (a) and delete sub-paragraph (b); and

(g) omit paragraphs (14) and (15).

10. After rule B12 (pension debit members), insert–

"**Part-time members**

B13. Where a person is entitled to an award under this Part and some or all of his service, by virtue of which his pensionable service is reckonable, was part-time service, his award shall be calculated in accordance with Part VIA of Schedule 2.".

Part C: Awards on death – spouses

11. In rule C1 (spouse's ordinary pension), paragraph (1) and C6 (widow's requisite benefit and temporary pension), paragraph (1)(a), for "3 years"' substitute "2 years".

Part F: Pensionable service and transfer values

12. In rule F1 (reckoning of and certificates as to pensionable service), in paragraph (3), after "rule" insert "F2A,".

13. In rule F2 (current service)–

(a) for paragraph (2)(c) substitute–

"(c) subject to paragraph (3) and rule F2A, any period of absence from duty without pay, or

(d) any period of maternity or adoption leave in respect of which the person has the right to, but does not, pay contributions under rule G2A.";

(b) in paragraph (3), after "duty without pay", insert "(excluding absence for maternity, paternity or adoption leave)"; and

(c) after paragraph (3), insert–

"(4) Any periods of pensionable service before and after any period of maternity or adoption leave in respect of which the person has the right to, but does not pay, contributions under rule G2A shall be treated as continuous.".

14. After rule F2 (current service), insert–

"**Maternity, paternity and adoption leave**

F2A.—(1) A woman serving as a regular firefighter is entitled to reckon as pensionable service any period of–

(a) paid maternity leave;

(b) unpaid ordinary maternity leave; and

(c) unpaid maternity leave in respect of which she has paid pension contributions to the fire authority in accordance with rule G2A,

taken on or after 23rd June 1994.

(2) A person serving as a regular firefighter is entitled to reckon as pensionable service any period of–

(a) paternity leave;

(b) ordinary adoption leave;

(c) paid additional adoption leave, and

(d) unpaid additional adoption leave in respect of which he has paid pension contributions to the fire authority in accordance with rule G2A,".

Part G: Pensionable pay and contributions

15.—(1) In rule G1 (pensionable pay and average pensionable pay)–

(a) in paragraph (1), for "his pay" substitute "the pay he receives (whether as a whole-time or part-time member of a brigade)";

(b) after paragraph (2), insert–

"(2A) For the purposes of rule G2, the pensionable pay of a regular firefighter during a period of maternity, paternity or adoption leave shall be deemed to be the pay to which the person is entitled for that period including any statutory maternity, paternity or adoption pay under the Social Security Contributions and Benefits Act 1992(**4**).";

(c) in paragraph (3), for "during" substitute "for"; and

(d) for paragraph (6) substitute–

"(6) For the purposes of paragraphs (3) and (5), any reduction of pensionable pay as a result of any–

(a) sick leave;

(b) stoppage of pay by way of punishment;

(c) ordinary maternity, ordinary adoption or paternity leave;

(d) paid additional maternity or additional adoption leave; or

(e) unpaid additional maternity or additional adoption leave where contributions have been paid under rule G2A,

shall be disregarded.".

16. After rule G2 (pension contributions), insert–

"**Optional pension contributions during maternity and adoption leave**

G2A.—(1) A regular firefighter who–

(a) is on maternity or adoption leave, which would not otherwise count as pensionable service under rule F2A; and

(b) who, for the whole or part of the leave period, is not entitled to receive pay (including any statutory maternity or adoption pay under the Social Security Contributions and Benefits Act 1992),

may elect to pay pension contributions in respect of that leave period.

(2) The contributions shall be calculated by applying rule G2 to the pensionable pay (including any statutory maternity or adoption pay under the Social Security Contributions and Benefits Act 1992) received by him immediately before the start of the unpaid period in question.

(**4**) 1992 c. 4.