WELSH STATUTORY INSTRUMENTS

2009 No. 1226 (W.109)

FIRE AND RESCUE SERVICES, WALES

PENSIONS, WALES

The Firefighters' Pension (Wales) Scheme (Amendment) Order 2009

Made - - - -	*13 May 2009*
Laid before the National Assembly for Wales - -	*15 May 2009*

Coming into force in accordance with article 1(2)

The Welsh Ministers in exercise of the powers conferred upon the Secretary of State in section 26(1) to (5) of the Fire Services Act 1947(**1**) and section 12 of the Superannuation Act 1972(**2**), as applied by section 16(3) of that Ac(**3**)), and now vested in them(**4**), make the following Order:

(**1**) 1947 c. 41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21). Subsections (1) to (5) of section 26 continue in force, for the purposes of the scheme established under that section as the Firemen's Pension Scheme and set out in the Firemen's Pension Scheme Order 1992 (S.I.1992/129), by the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004 (S.I. 2004/2918 (W.257)). The name of the scheme was changed to the Firefighters' Pension (Wales) Scheme by article 4(1) of that Order. The Scheme was further amended by the Firefighters' Pension (Wales) Scheme (Amendment) Order 2006 (S.I. 2006/1672 (W.160)) and the Firefighters' Pension Scheme (Wales) (Amendment) Order 2007 (S.I. 2007/1074 (W.112)). 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 of, and Schedule 3 to, the Theft Act 1968 (c. 60), sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 (c. 11), section 100 of, and Schedule 27 to, the Social Security Act 1973 (c. 38), section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 (c. 18), section 32 of the Magistrates' Courts Act 1980 (c. 43), section 1 of the Police and Firemen's Pensions Act 1997 (c. 52) and Schedule 25 to the Civil Partnership Act 2004 (c. 33), and article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551).

(**2**) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(**3**) Section 16 continues in force, for the purposes of the Firemen's Pension Scheme (renamed the Firefighters' Pension (Wales) Scheme by the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004 (S.I. 2004/2918 (W.257))).

(**4**) The Fire Services Act 1947 (the "1947 Act") was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21) (the "2004 Act"). The Secretary of State's functions under subsections (1) to (5) of section 26 of the 1947 Act were continued in force for the purposes of the scheme established under that section as the Firemen's Pension Scheme and set out in the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), by section 36 of the 2004 Act and S.I. 2004/2918 (W.257) made thereunder. The powers of the Secretary of State under section 36 of the 2004 Act were exercisable by the National Assembly for Wales by virtue of section 62 of the 2004 Act. The functions of the National Assembly for Wales were transferred to the Welsh Ministers under section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

Title, commencement and application

1.—(1) The title of this Order is the Firefighters' Pension (Wales) Scheme (Amendment) Order 2009.

(2) This Order comes into force on 9 June 2009, but—

(a) the amendment made by article 2 and paragraph 1 of the Schedule so far as it relates to new rule B5A (entitlement to two pensions) has effect from 1 April 2007; and

(b) the other amendments have effect from 1 July 2007.

(3) This Order applies in relation to Wales.

Amendment of the Firemen's Pension Scheme Order 1992

2. Schedule 2 to the Firemen's Pension Scheme Order 1992(**5**) (in which is set out the Firefighters' Pension (Wales) Scheme), is amended in accordance with the Schedule to this Order.

Brian Gibbons
Minister for Social Justice and Local Government, one of the Welsh Ministers

13 May 2009

(**5**) S.I. 1992/129; amended by S.I. 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912, 2006/1672 (W.160) and 2007/1074 (W.112). The Scheme was made under section 26 of the Fire Services Act 1947 (c. 41). That Act was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21) (the "2004 Act"). Subsections (1) to (5) of section 26 continue in force, for the purposes of the scheme established under that section as the Firemen's Pension Scheme, by section 36 of the 2004 Act and S.I. 2004/2918 (W.257) made thereunder. The name of the scheme was changed, in relation to Wales, by article 4(1) of S.I. 2004/2918 (W.257).

SCHEDULE Article 2

AMENDMENT OF THE FIREFIGHTERS' PENSION (WALES) SCHEME

1. In Part B (personal awards), after rule B5 (deferred pension), insert—

"**Entitlement to two pensions**

B5A.—(1) A regular firefighter who—

(a) on taking up a different role; or

(b) becoming entitled to a different rate of pay in his existing role,

suffers a reduction in the amount of his pensionable pay such that the amount to be taken into account in the calculation of the pension to which he will be entitled at normal pension age is less than it would otherwise have been, is entitled to two pensions.

(2) The amounts of the pensions shall be those found by applying the formulae set out in paragraphs (3) and (4) but, where the aggregate of those amounts exceeds that of the single award to which the firefighter would be entitled under paragraph (6) if he were to give notice under that paragraph or under paragraph (7) if he were to make an election under rule G3, his entitlement shall be to an amount equal to the amount of that single award.

(3) The amount of the first pension is that found by applying the formula—

$$A \times \frac{B}{C} \times \frac{D}{60}$$

where—

A is the firefighter's average pensionable pay for the year ending with his last day of service at the higher rate of pay;

B is the firefighter's pensionable service up to that day;

C is the firefighter's total pensionable service; and

D is the total number of 60ths that would have been used in the calculation of his single award had he given the instruction referred to in paragraph (6).

(4) The amount of the second pension is that found by applying the formula—

$$E \times \frac{F}{C} \times \frac{D}{60}$$

where—

C and D have the same meanings as in paragraph (3);

E is the firefighter's average pensionable pay for the year ending with his last day of service; and

F is—

(a) where the aggregate of—

(i) the pensionable service used to ascertain the value of B in his case for the purpose of the formula in paragraph (3); and

(ii) his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service,

exceeds 30, the difference between B and 30;

(b) in any other case, his pensionable service for the period commencing with his first day of service at the lower rate of pay and ending with his last day of service.

(5) Subject to paragraph (6), the pensions become payable on the date on which a pension would have become payable to the firefighter in whichever of the circumstances referred to in rules B1, B2, B3 and B5 applies in his case.

(6) A firefighter who is entitled to two pensions under this rule may, before leaving the employment of the fire and rescue authority by which he is employed, by written notice instruct the authority to make a single award which shall be calculated in accordance with whichever of rules B1, B2, B3 and B5 is applicable in his case.

(7) Where a firefighter who would be entitled to two pensions under paragraph (1) makes an election under rule G3, he shall be entitled instead to a single pension, calculated as if it were a deferred pension to which he was entitled under rule B5.

(8) In paragraph (1), "role", in relation to a firefighter, means the role in which he is for the time being employed, being a role set out in "Fire and Rescue Services Rolemaps" issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005(**6**).

Additional pension benefit: long service increment

B5B.—(1) A regular firefighter who—

(a) in respect of a period that includes 30 June 2007 is entitled to a long service increment or to an interim or transitional payment connected with long service, and

(b) on or after 1 October 2007—

(i) retires from employment as a regular firefighter, or

(ii) becomes entitled to a deferred pension under rule B5,

shall be credited with an amount of additional pension benefit.

(2) Subject to paragraph (3), the amount of additional pension benefit is that calculated in accordance with the formula—

$$\frac{A + (B \times 2) \times £990}{60}$$

where—

A is the number in years (counting part of a year as the appropriate fraction) by which the firefighter's pensionable service up to and including 30 June 2007 exceeds 15 but does not exceed 20; and

B is the number in years (counting part of a year as the appropriate fraction) by which his pensionable service up to and including 30 June 2007 exceeds 20.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for September 2007, the amount of additional pension benefit (as calculated in accordance with paragraph (2) and, if applicable, this paragraph) shall be increased by the same percentage as the percentage increase in the Retail Prices Index.

(**6**) The document is accessible at http://www/lge.gov.uk/conditions/firefighters/content/documents/fire service rolemaps.pdf.