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Dear Sir or Madam

THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) ORDER 2008
THE FIREFIGHTERS' PENSION SCHEME AMENDMENT (SCOTLAND) (No. 2) ORDER
2008

Please find enclosed draft Orders that seek to amend both the Firefighters Pension Scheme (FPS) outlined by the Firefighters' Pension Scheme Order 1992 as amended and the New Firefighters' Pension Scheme (NFPS) outlined by the Firefighters' Pension Scheme (Scotland) Order 2007.

The principal changes to both schemes take account of the introduction of Continual Professional Development (CPD) payments which replaced the Long Service Increment (LSI). Full details of how the Additional Pension benefit (APB) accrues and is calculated for both CPD and LSI were outlined in Scottish Fire Circular 16/2007. However, the following amendments to that guidance have been taken into account.

Firstly it was intended originally that where a firefighter retired after 30th September 2007 then average pensionable pay would have to exclude any LSI payments and benefits related to LSI would be in the form of an APB only. It has been recognised that some firefighters retiring after 30th September might be disadvantaged by this and the enclosed amendments allow for the option of pension calculated on average pensionable pay including LSI if this is more beneficial.

Secondly where a firefighter is able to retire under Rule B1 that the APB should be payable from the date of retirement. This was not clearly outlined in the circular and the amending orders take this into account.

In addition to the CPD and LSI amendments there were a number of other changes to both the FPS and NFPS.



FPS

Scottish Fire Circular 16/2007 confirmed the intention of introducing a rule to provide for the calculation and payment of two or split pensions to take account of a reduction of pay that would have an adverse effect on pensionable pay at the point of retirement. This facility is already available in the NFPS and provides that if it is more favourable to the member a split pension can be paid.

NFPS

There are a number of amendments needed to the Firefighters' Pension Scheme Order (Scotland) 2007 and these are included in the attached amending Order. An explanation of the changes being made is set out in Annex A.

The amendments being introduced in both Orders mirror (excluding a number of minor amendments which were included in the original Scottish NFPS Order) those being made by The Department of Communities and Local Government following consultation with the Firefighters' Pension Committee.

Any comments regarding the enclosed draft amending Orders should be made by 12 February 2008.

Yours sincerely



Jim Preston

Addressees

COSLA

Fire Brigades Union (Scottish Region)

Chief and Assistant Chief Fire Officers Association (Scottish Region)

Retained Firefighters Union (UK)

Audit Scotland

National Association of Pension Funds

Women's National Commission

DCLG Fire Pensions section

DCLG LGPS Pensions section

Home Office Police Pension section

HM Treasury

Government Actuary's Department

DWP

HMRC

Scottish Government Fire and Rescue Services

Scottish Government Legal Department



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NEW FIREFIGHTERS' PENSION SCHEME

ANNEX A

Changes in addition to those introduced for CPD and LSI.

Rule	Amendment	Reason
Part 1, rule 2	Definition of "child". Delete "a scheme member" and replace by "a firefighter member, a deferred member and a pensioner member".	Scheme member is not defined and could include all the categories covered by Part 2, rule 1 including dependent and credit members whose children might not be eligible for benefits.
Part 2, rule 1	Provision to make clear that a retained firefighter employed before 6 th April 2006 may be a member of the Scheme. It could be achieved by deleting rule 1(1)(b)(iii).	A retained firefighter appointed before 6 th April 2006 is not covered by rule 1(1) because he/she was not eligible for membership of the 1992 Scheme.
Part 2, rule 1(5)(a), (b) & (c)	After "firefighter member" add "deferred member and pensioner member"	As provided the person would only be classified as a "dependent member" if the Scheme member had died in service as a member. This is not the case. The provision in Part 4, rule 6 is correct.
Part 2, rule 1(6)	In line 1, after "a firefighter member" add "a deferred member and a pensioner member". Consequential changes to the subsequent references to "firefighter member" in (6), (7) and (8) will be required.	As provided only an active member can nominate a partner. This is not intended and it needs to be extended to cover deferred and pensioner members.
Part 2, rule 1(6)(a) and (b)	Move the words "in a long-term relationship" from (a) to (b)	As drafted a member would not be able to nominate an unmarried partner until the relationship had lasted two years. It is implicit in (7)(a) that a decision on whether the relationship is long-term will be made when the question has to be considered, i.e. when the member dies. The provision therefore needs to be moved to the list of criteria in (6)(b).
Part 2, rule 1(7)	Add "at least" before "two years".	As written, the rule requires a relationship to have been for a period of exactly two years.
Part 2, rule 1(10)	For "is entitled to be a member" substitute "is a firefighter member"	
Part 2, rule 2(1)(b)	Amend to reflect the provisions of section 71 of	As drafted the NFPS did not accurately reflect the provisions



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	the Pension Schemes Act 1993 to provide that a transfer payment in respect of the member's rights under a personal pension scheme has been made to the Scheme which qualifies him for benefits under the Scheme.	of section 71 of the 1993, the proposed amendment will rectify this. No change will be required to the interpretation of "personal pension scheme" in Part 1, rule 2(1).
Part 3, rule 2 and Annex 1	Add a rule dealing with the calculation of a higher tier pension awarded to a firefighter member who is entitled to two pensions under rule 7 of Part 3. The higher tier pension should be best of either an unenhanced first pension and a second pension enhanced in accordance with paragraphs 2 or 3 of Annex 1; or a single pension calculated in accordance with rule 7(7) and Annex 1.	We have identified a need to provide arrangements for calculating a higher tier pension in the case of a firefighter member who is entitled to two pensions under rule 7 of Part 3.
Part 3, rule 7(4)	The second pension will be the final pensionable pay as at the last day of service.	The amendment will be consistent with (7)(a).
Part 3, rule 9	A provision is required on the lines of rule B7(10) of the FPS to ensure that if a pension is terminated under rule 2(3) of Part 9 account is taken of an earlier commutation so that any subsequent pension and lump sum can be reduced accordingly.	There is no provision to require an authority to take account of an earlier commutation in the case of a person who has retired on health grounds and the ill-health award has been cancelled, or who has received early payment of a deferred award. On cancellation these awards become deferred pensions, or if the person resumes service as a firefighter, the earlier service counts again as pensionable service.
Part 3, rule 9(9)(b)	Amend reference to Part 7A of the Compensation Scheme.	Increases in awards under Part 7 of the FCS apply to the FPS 1992 and Part 7A to the NFPS.
Part 3, rule 11(4)	Amend reference to Part 7 of the Compensation Scheme to Part 7A.	It is Part 7A of the Compensation Scheme which deals with reservists
Part 4, rule 2(1)(a)	Amend reference to "rule 2(4)" of Part 3 to "rule 2(3)"	The reference is incorrect.
Part 5, rule 1(4)	After "part-time" add "retained or volunteer"	The provision needs to refer also to retained and volunteer firefighters.
Part 5, rule 1(8)(b)	Amend reference to "paragraph (2)" to "paragraph (1)"	The reference is incorrect.



Part 5, rule 1(8)(b) & (9)	Amend to provide that the case of a person who dies having made only part payment is treated in the same way as a person who dies before any payment is made.	There is an anomaly in that in the case of a person who makes an election under rule 4 of Part 10 (reckoning of unpaid period of absence) but dies before any payment is made, the duty is reckoned as pensionable service, but there is no comparable provision in the case of a person who has part paid at death.
Part 5, rule 2(1)	In paragraph (b)(ii) delete “including” and substitute “excluding”.	On reflection, including the commuted lump sum in the calculation means that there is unlikely to be any post retirement death grant once the pensioner is in the third year of retirement. In consequence the provision could be regarded as creating an expectation which might not be delivered. It was considered whether there might be a cap on the amount which would be received from the uncommuted pension but the view taken was that this would make it more complex for administrators. Neither the PCSPS nor the LGPS include the commuted lump sum in the calculation.
Part 6	Insert a provision providing for the payment of a lump sum death grant where a pension credit member dies before pension credit benefit becomes payable. An amount equal to the annual rate of the pension to which the member would have been entitled if he/she had attained the normal benefit age under rule 3 of Part 3 (deferred pension) on the date of his/her death multiplied by 2.25 should be payable to the member’s personal representative. The provision would be equivalent to Rule N10 (5), (6) of the FPS 1992.	Rule N10 (5), (6) of the FPS provides for the payment of a lump sum death grant where the pension credit member dies before any benefits become payable. A similar provision is required in the NFPS.
Part 6, rule 3(2)(b)	Delete	The provision, which reflects the equivalent provision in the FPS, is not required because it is the pension rather than the value of the pension which is commuted.
Part 6, rule 5	Omit (1)(b)(ii)(bb)	To maintain consistency with the treatment of the death grant for pensioners under Part 5, rule 2, the requirement to take



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		into account “any lump sum received on commutation” should be removed.
Part 7, rule 2(2)	Add “additional” after “his forces period is not reckonable as”	Additional pensionable service is purchased under Chapter 2 of Part 11, not pensionable service.
Part 7, rule 2(3)	Add a provision that would set out an explanation of how pensionable service and pay will count for retained and volunteer firefighters. It should be average pensionable pay divided by reference pay for the previous 12 months.	Rule 2(3) works for regular firefighters but there needs to be a separate explanation of how pensionable service and pay will count for retained and volunteer firefighters.
Part 7, rule 3(2)	Delete (b). Neither (3) nor (4) allow an award where there is a qualifying injury.	
Part 8, rule 3(1)(b)(i)	Amend reference to “rule1” to “rule 2”.	
Part 10, rule 2(1)(d)	Before “ill health” the words “lower tier” and delete “other than any period included by way of enhancement”.	Under two tier ill-health arrangements, there is no enhancement. If a person is permanently disabled from regular employment he/she is entitled to a higher tier pension.
Part 10, rule 2(6)(b)	Add after “Part 5”, “rule 1”	The death grant under Part 5, rule 2 takes into account pension which has been purchased and should not be excluded.
Part 10, rule 4(1)	After Part 11 add “and Part 13”	The employer’s contribution is covered by rule 2(2) of Part 13.
Part 10, rule 4(2)	Amend “unpaid leave” to read “absence without pay”	The scheme makes a distinction between “leave” which implies the employer’s consent, and unapproved absence.
Part 11, rule 1(5)	Amend “December” to “September”	Formerly, HM Treasury set the earnings cap for pension schemes and no action was needed on the part of scheme administrators. From April 2006 with the new tax regime for pensions, the decision to maintain the earnings cap is a matter for a scheme regulator, and the necessary provision is included in Part 11, rule 1(5) for an annual increase in the cap for the NFPS. However we had wrongly assumed that HM Treasury had worked from the RPI increase from end of December each year, when it was September.



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Part 11, rule 2(6)	Amend to read “The final pensionable pay of ...shall be the determined by reference to the final pensionable pay of a regular firefighter employed in a similar role and with equivalent qualifying service”	The amendment is needed to clarify the intention with regard to calculating the pension of retained and volunteer firefighters.
Part 12, rule 4(6)(a)	Delete “firefighter”	The firefighter may not be transferring as a firefighter to the other Club Scheme.
Part 12, rule 9(2)(a)	Delete “or such longer period as the authority may allow”	The Public Sector Transfer Club does not allow for any discretion on member schemes on extending the period during which a member may ask for a transfer. The FPS already reflects the Club rule (Rule F7(2))
Part 12, rule 10(3)(a)	Delete	The provision effectively defeats the intention of Chapter 3 to allow transfers in from non-Club schemes.
Part 12, rule 12	after “pensionable service” add “and qualifying service”	The certificate should show also “qualifying service” as this defines eligibility for benefits and, in some cases, the amount of the benefit.
Part 12, rule 12	Amend (1) to make clear that in addition to a “firefighter member” information should be provided when a person who has made a contribution election under rule 5 of Part 2.	As provided for in the Scheme, when a person who has made a contribution election any deferred pension to which they are entitled would remain with the authority with which they were employed at the time they made the election. It would be administratively simpler if it transferred with them.
Part 13, rule 1(1)	Delete “regular”	The provision relates to all firefighters, not only regular firefighters.
Annex 1, paragraph 1(2)	Add after “Where a person” the words “who is a retained or volunteer firefighter”; and “final” before “reference pay”.	As drafted (2) does not make clear that it is applicable to retained and volunteer firefighters.
Annex 1, paragraph 1(3)	After “retained” add “or volunteer”	