

2007 No. XXXX

FIRE AND RESCUE SERVICES, ENGLAND
PENSIONS, ENGLAND

The Firefighters' Pension Scheme (England) (Amendment)
Order 2007

Made - - - - *XXXX 2007*
Laid before Parliament *XXXX 2007*
Coming into force in accordance with article 1(3)

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

As required by section 34(5) of that Act, the Secretary of State consulted such persons as she considered appropriate before making the Order.

The Secretary of State for Communities and Local Government makes the following Order:

Citation, interpretation, commencement and application

1.—(1) This Order may be cited as the Firefighters' Pension Scheme (England) (Amendment) Order 2007.

(2) In this article “the Scheme” means the New Firefighters' Pension Scheme (England) set out in Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006(b).

(3) This Order shall come into force on XXXX 2007 but, subject to paragraphs (4) and (5), shall have effect from 6th April 2006.

(4) The following provisions of the Schedule to this Order, and so much of article 2 of this Order as relates to those provisions, shall have effect from 1st October 2006—

- (a) paragraph 3(b),
- (b) paragraph 4(f), in so far as it relates to new rule 7A of Part 3 of the Scheme (additional pension benefit: long service), and so much of new rule 7C as relates to new rule 7A, and
- (c) paragraph 11(b)(iv).

(5) The following provisions of the Schedule, and so much of article 2 as relates to those provisions, shall have effect from 1st July 2007—

(a) 2004 c.21.
(b) S.I. 2006/3432.

- (a) paragraph 4(f), in so far as it relates to new rule 7B of Part 3 of the Scheme (additional pension benefit: continual professional development), and so much of new rule 7C as relates to new rule 7B, and
 - (b) paragraph 11(a)(i) and (b)(i).
- (6) This Order applies in relation to England only(a).

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

2.—(1) Schedule 1 to the Firefighters’ Pension Scheme (England) Order 2006(b) shall be amended in accordance with the Schedule to this Order.

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

	<i>Name</i>
	Minister of State
Date	Department for Communities and Local Government

SCHEDULE

**AMENDMENT OF THE FIREFIGHTERS’ PENSIONS SCHEME
(ENGLAND) ORDER 2006**

1. In Part 1, in rule 2 (interpretation), in paragraph (1)—
 - (a) in the definition of “child”, for “scheme member”, substitute “firefighter member, a deferred member or a pensioner member”;
 - (b) in the definition of “nominated partner”, for “rule 1(2)” substitute “rule 1(6)”; and
 - (c) in the definition of “transfer value payment”, for “him” substitute “a person”.
2. In Part 2, in rule 1(scheme membership)—
 - (a) in paragraph (1)—
 - (i) omit “entitled to be”;
 - (ii) at the end of sub-paragraph (b)(i), add the word “and”; and
 - (iii) omit sub-paragraph (b)(iii) and the word “and” immediately preceding that sub-paragraph;
 - (b) in paragraph (5), add at the end of sub-paragraphs (a), (b) and (c), “, deferred member or pensioner member”;
 - (c) for paragraph (6) substitute—

“(6) For the purposes of paragraph (5), a firefighter member, deferred member or pensioner member (referred to in this paragraph as “the scheme member”) may nominate (a “nominated partner”) a person who—

 - (a) has been living with the scheme member, otherwise than as his spouse or civil partner; and
 - (b) at the date on which the question of the person’s status in relation to the scheme member falls to be considered—

(a) Powers under sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by section 62 of the Fire and Rescue Services Act 2004. 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.

(b) S.I. 2006/3432.

- (i) is not the spouse or civil partner of any other person,
- (ii) is registered with the scheme administrator as the scheme member's nominated partner,
- (iii) is financially dependent on the scheme member, or is, with the scheme member, in a state of mutual financial dependency, and
- (iv) is in a long-term relationship with the scheme member,

but this is subject to paragraph (8).”;

- (d) in paragraph (7), in the definition of “long-term relationship”—
 - (i) for “the period of two years”, substitute “a period of at least two years”; and
 - (ii) after “firefighter member”, insert “, deferred member or pensioner member”;
- (e) in paragraph (8), after “firefighter member”, insert “, deferred member or pensioner member”;
- (f) in paragraph (9), for “in to” substitute “into”; and
- (g) in paragraph (10), for “entitled to be a”, substitute “a firefighter”.

3. In Part 2—

- (a) in rule 2 (eligibility conditions), in paragraph (1), for sub-paragraph (b) substitute—
 - “(b) such transfer payment has been made to the Scheme in respect of his personal pension rights under a personal pension scheme as qualifies him for benefits under the Scheme; or”; and
- (b) in rule 5 (election not to make pension contributions), after paragraph (1) insert—
 - “(1A) A contributions election may not be made solely in respect of contributions relevant to additional pension benefit under rule 7B of Part 3 (additional pension benefit: continual professional development).

4. In Part 3 (personal awards)—

- (a) in rule 2 (award on ill-health retirement)—
 - (i) in paragraph (3), after “calculated”, insert “, subject to paragraph (4),”; and
 - (ii) after paragraph (3), add—
 - “(4) The amount of the higher tier ill-health pension of a firefighter member who, by virtue of rule 7, is entitled to two pensions, is whichever is the greater of—
 - (a) the sum of his lower tier ill-health pension (calculated in accordance with paragraph 1 of Annex 1) and the higher tier ill-health pension to which he would be entitled if paragraph (3) were not subject to this paragraph (calculated in accordance with paragraph 2 or 3 of Annex 1); and
 - (b) the amount of the single pension to which he would be entitled under paragraph (7) of rule 7,

and for the purposes of this paragraph it shall be assumed that the person had given the written notice referred to in paragraph (6) of rule 7.”;

- (b) in rule 4 (cancellation of deferred pension), in paragraph (2), for “the service” substitute “the authority's employment”;
- (c) in rule 5 (pension on member-initiated early retirement), in paragraph (5)(a), for “pensionable”, in the second place in which that word appears, substitute “reference”;
- (d) in rule 6 (pension on authority-initiated early retirement), in paragraph (1), for “the service” substitute “the authority's employment”;
- (e) in rule 7 (entitlement to two pensions)—
 - (i) in paragraph (1), for “paragraph (7)” substitute “paragraph (6)”; and
 - (ii) in paragraph (4), for “that day”, substitute “the last day of his membership of the Scheme”;

(f) after rule 7 insert—

“Additional pension benefit: long service increment

7A.—(1) A firefighter member who—

- (a) at any time before 1st July 2007 is in receipt of a long service increment, and
- (b) on or after 1st October 2007—
 - (i) retires from employment as a regular firefighter, or
 - (ii) becomes entitled to a deferred pension under rule 3,

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—

$$\frac{A + (B \times 2)}{60} \times \text{£}990$$
, where—

60

A is the number in years (counting part of a year as the appropriate fraction) by which the member’s pensionable service up to and including 30th 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 exceeds 20 but does not exceed 30.

(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.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In paragraph (3)—

“relevant tax year” means a tax year in relation to which—

- (a) the amount of a firefighter member’s pension benefits are calculated for the purposes of this Scheme; and
- (b) he is not a pensioner member or a deferred member; and

“tax year” means the period of 12 months beginning with 6th April.

Additional pension benefit: continual professional development

7B.—(1) A firefighter member who, in any CPD year beginning with the year commencing on 1st July 2007, receives CPD payments, shall be credited with an amount of additional pension benefit in respect of that year.

(2) Subject to paragraph (3) and rule 7C(3), the amount of additional pension benefit in respect of a CPD year shall be determined on 1st July immediately following the year in question in accordance with guidance and tables provided by the Scheme Actuary.

(3) Where the Retail Prices Index for the month of September preceding the relevant tax year is higher than it was for the September in the CPD year in question, the amount of additional pension benefit for that CPD year (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.

(4) Any increase in accordance with paragraph (3) shall be applied with effect from the first Monday of the relevant tax year.

(5) In this rule—

“CPD payments”, as regards a firefighter, means payments made to him by his employing authority in respect of his continual professional development;

“CPD year” means a period of 12 months beginning with 1st July in which a firefighter member is in receipt of CPD payments;

“relevant tax year” means a tax year in relation to which—

(a) the amount of a firefighter member’s pension benefits are calculated for the purposes of this Scheme; and

(b) he is not a pensioner member or a deferred member; and

“tax year” means the period of 12 months beginning with 6th April.

Additional pension benefit: supplementary provisions

7C.—(1) Subject to paragraphs (2) to (4), additional pension benefit under rule 7A or 7B is payable at normal retirement age.

(2) Where the firefighter member resigns or is dismissed or makes a contributions election, additional pension benefit is payable at normal benefit age; and paragraphs (4) to (6) of rule 3 (deferred pension) shall apply in relation to that benefit as if it were a deferred pension to which he was entitled under that rule.

(3) Where the firefighter member leaves his employment on ill-health retirement, his additional pension benefit is payable immediately.

(4) Where the firefighter member takes authority-initiated early retirement or member-initiated early retirement, his additional pension benefit is payable at the same time as his pension under rule 5 or, as the case may be, rule 6.

(5) For the purposes of rules 9 and 10, additional pension benefit shall be treated as if it were a pension payable under this Part.

(6) For the purposes of determining the amount of any survivor’s pension under Part 4 or pension credit under Part 6, additional pension benefit shall be treated as if it were a pension payable under this Part.”;

(g) in rule 8 (refund of aggregate pension contributions), in paragraph (1)(b), for “the service” substitute “the authority’s employment”;

(h) in rule 9 (commutation: general)—

(i) after paragraph (8), insert—

“(8A) Paragraph (8B) applies where—

(a) notice of commutation has taken effect in relation to—

(i) a person’s ill-health pension, and

(ii) the pension is withdrawn under rule 2(3) of Part 9 (consequences of review);
or

(b) notice of commutation has taken effect in relation to—

(i) a person’s deferred pension that has been paid before normal benefit age (“the early-paid pension”), and

(ii) the early-paid pension is withdrawn under rule 2(5) of Part 9].

(8B) If the person becomes entitled to another pension, other than an injury pension under the Compensation Scheme, for which he is entitled to reckon the period of pensionable service that was reckonable for the purposes of the ill-health pension or the early-paid pension (as the case may be), the other pension shall be reduced by the amount by which the ill-health pension or the early-paid pension would have been reduced if it had not been withdrawn.

(8C) Where paragraph (8B) applies, and notice of commutation is given in respect of the other pension, the portion of it that may be commuted is reduced by the amount of the reduction under that paragraph.”; and

- (ii) in paragraph (9)(b), for the words from “Part 7” to the end, substitute “Part 7A of the Compensation Scheme in an award to a reservist.”**(a)**;
- (i) in rule 10 (commutation: small pensions), in paragraph (1), omit “fire and rescue”; and
- (j) in rule 11 (allocation of pension), in paragraph (4), for “Part 7 of the Compensation Scheme (awards to, or on death of, servicemen)”, substitute “ Part 7A of the Compensation Scheme (awards to, or on death of, reservists)”.

5. In Part 4 (survivors’ pensions)—

- (a) in Chapter 1, in rule 2 (amount of survivor’s pension: general), for “rule 2(4)” substitute “rule 2(3)”; and
- (b) in Chapter 2, in rule 7 (child’s pension: limitations and duration), in paragraphs (3) and (4), for “firefighter member” substitute “deceased”.

6. In Part 5 (awards on death)—

- (a) in rule 1 (death grant)—
 - (i) in paragraph (4), after “part-time”, insert “, retained or volunteer”;
 - (ii) in paragraph (8), for sub-paragraph (b), substitute—

“(b) dies without having paid in full the contributions due to his employing authority under that rule,”;
 - (iii) in paragraph (9), after “amount”, insert “or, where there has been partial payment, the balance”; and
- (b) in rule 2 (post-retirement death grant), in paragraph (1)(b)—
 - (i) in paragraph (i), after “period”, insert “(excluding any lump sum that he may have received on commutation under rule 9 or 10 of Part 3)”; and
 - (ii) in paragraph (ii),for “including”, substitute “excluding”.

7. In Part 6 (pension sharing on divorce)—

- (a) in rule 3 (commutation of part of pension credit benefits), for paragraph (2), substitute—

“(2) The commuted portion must not exceed one quarter of the amount of the pension.”;
- (b) in rule 5 (post-retirement death grant: pension credit members), in paragraph (1)(b), for paragraph (ii), substitute—

“(ii) the instalments of pension that have been paid,”; and
- (c) after rule 5 add—

“Death grants where pension credit member dies before pension credit benefits payable

6.—(1) If a pension credit member dies before any benefits deriving from the member’s pension have become payable to him under this Scheme, a lump sum death grant is to be paid to his personal representatives.

(2) The amount of the grant shall be equal to the product of 2.25 and the annual rate of the pension to which the member would have been entitled under rule 3 of Part 3 (deferred pension); and for this purpose it shall be assumed that the member—

- (a) was a person to whom that rule applied, and
- (b) attained normal benefit age on the date of his death.”.

8. In Part 7 (reservists)—

- (a) in rule 2 (continuity of employment)—
 - (i) in paragraph (2), for “pensionable”, substitute “additional”;

(a) Part 7A was inserted by S.I. 2006/3434, Schedule, para 7.

- (ii) in paragraph (3)—
 - (aa) after “Part 11”, insert “ where he was a regular firefighter immediately before the forces period in question”; and
 - (bb) for the words after sub-paragraph (b)(ii) substitute—
 - “is less that his notional pay for that first-mentioned period, he shall be treated as having no pensionable pay (and, accordingly, no liability to make pension contributions)”;
 - (iii) after paragraph (3) add—
 - “(4) Where a reservist was a retained or volunteer firefighter immediately before the forces period in question, the calculation of the amount of his pension contributions under rule 3 of Chapter 1 of Part 11 shall be made by dividing his reference pay for the period of 12 months that immediately preceded his forces period by the average of his pensionable pay for that 12-month period.”; and
 - (b) in rule 3 (awards on death or permanent disablement), for paragraph (2) substitute—
 - “(2) Where a reservist dies—
 - (a) during his forces period; or
 - (b) while receiving a pension under paragraph (1),
 an award shall be payable in accordance with paragraphs (3) and (4).”.
- 9. In Part 8 (determination of questions and appeals)—**
- (a) in rule 3 (review of medical opinion), in paragraph (1)(b)(i), for “rule 1”, substitute “rule 2”; and
 - (b) in rule 4 (appeals against decisions based on medical advice), in paragraph (4)(b) omit “(“the explanation”)”.
- 10. In Part 10 (qualifying service and pensionable service)—**
- (a) in rule 1 (qualifying service), in paragraph (b)(iv) omit “paragraph (2) of”;
 - (b) in rule 2 (reckoning of pensionable service)—
 - (i) in paragraph (1)(d), for “an”, substitute “a lower tier” and omit “, other than any period included by way of enhancement,”; and
 - (ii) in paragraph (6)(b), after “under”, insert “rule 1 of”; and
 - (c) in rule 4 (reckoning of unpaid period of absence)—
 - (i) in paragraph (1),for “Part 11”, substitute “Parts 11 and 13”; and
 - (ii) in paragraph (2), for “unpaid leave”, substitute “absence without pay”.
- 11. In Part 11 (pensionable pay, pension contributions and purchase of additional service)—**
- (a) in rule 1 (pensionable pay)—
 - (i) in paragraph (1), for the words from “other than” to the end of sub-paragraph (a), substitute “except any allowance or emoluments paid to him on a temporary basis, other than payments in respect of his continual professional development (see rule 7B of Part 3), and”; and
 - (ii) in paragraph (5), for “December” (in both places), substitute “September”;
 - (b) in rule 2 (final pensionable pay)—
 - (i) after paragraph (1), insert—
 - “(1A) Where the pensionable pay received by a firefighter in respect of the 365 pensionable pay days referred to in paragraph (1) includes an amount in respect of his continual professional development (see rule 7B of Part 3), that amount shall be disregarded for the purpose of ascertaining his final pensionable pay.”;
 - (ii) in paragraph (2)(a)(i), omit the words after “higher rate”;

(iii) in paragraph (4), for “paragraph (6)” substitute “paragraph (7)”;

(iv) after paragraph (5) insert—

“(5A) The final pensionable pay of a firefighter member who—

(a) is entitled to a long service increment; and

(b) retires after 30th September 2006 and before 1st October 2007, or becomes entitled to a deferred pension under rule 3 of Part 3 within that period,

shall be calculated as if his long service increment had accrued at the rate of £990 per annum (disregarding the reduction that had effect in relation to times on and after 1st October 2006 and any interim or transitional payment related to his long service increment).

(5B) The final pensionable pay of a firefighter member who retires on or after 1st October 2007 shall be calculated without reference to any payment that he may have received by way of, or related to, a long service increment.”;

(c) for paragraph (6), substitute—

“(6) The final pensionable pay of a retained or volunteer firefighter shall be determined by reference to the final pensionable pay of a regular firefighter employed in a similar role and with equivalent qualifying service.”; and

(d) in rule 9 (periodical contributions in respect of unpaid service or absence), in paragraph (1)(a), for “rule 8(1)” substitute “rule 7(1)”.

12. In Part 12 (transfers into and out of the Scheme)—

(a) in rule 4 (applications for transfer value payments), in paragraph (6)(a)—

(i) for “eligible”, substitute “, or is entitled”; and

(ii) omit “firefighter”;

(b) in rule 9 (procedure for applications under rule 8), in paragraph (2)(a), omit “, or such longer period as the authority may allow”;

(c) in rule 10 (acceptance of transfer value payments), in paragraph (3), omit sub-paragraph (a);

(d) in rule 12 (transfer of pension history between English authorities)—

(i) in paragraph (1)—

(aa) at the end of sub-paragraph (a), insert “, and”; and

(bb) omit sub-paragraph (c) and the word “, and” immediately preceding that sub-paragraph; and

(ii) after “pensionable service” (in each place), insert “and qualifying service”.

13. In Part 13 (Firefighters' Pension Fund)—

- (a) in rule 2 (payments and transfers into Firefighters' Pension Fund), for paragraph (5) substitute—

“(5) In respect of each firefighter employed by the authority who retires with an entitlement to immediate payment of a lower tier ill-health pension under rule 2 of Part 3, the authority shall transfer into the FPF such amount as shall be determined and notified to them by the Secretary of State as the lower tier ill-health charge applicable in respect of that pension.”; and

- (b) in rule 3 (transfers from Firefighters' Pension Fund), for paragraphs (4) and (5), substitute—

“(4) Where a higher tier ill-health pension or a lower tier ill-health pension is wholly and permanently withdrawn under any provision of Part 9, paragraph (4) or (5) of rule 2 of this Part (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 withdrawn.”.

14. In Part 14 (payment of awards), in rule 1 (authorities responsible for payment of awards), in paragraph (1), omit “regular”.

15. In Annex 1 (ill-health pensions), in paragraph 1—

- (a) in sub-paragraph (2)—

- (i) after “person”, insert “who is a retained or volunteer firefighter”; and
(ii) after “by his”, insert “final”; and

- (b) in sub-paragraph (3), after “retained”, insert “volunteer”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006. Some of the amendments correct errors in the New Firefighters' Pension Scheme (England) (“the Scheme”) set out in that Schedule. Others introduce new provisions.

Except as mentioned below, the Order has effect from 6th April 2006, which is the date from which the Scheme has effect. Power to give the Order retrospective effect is conferred by section 34 of the Fire and Rescue Services Act 2004.

The amendments specified in paragraphs 1(b), 4(e)(i), (g)(ii) and (i), 5(a), 9(a), 11(c)(i) and 12(b)(ii) and (c) of the Schedule correct cross-references.

The amendments specified in paragraphs 2(f) and 8(a)(ii)(bb) of the Schedule correct typographical and layout errors.

Other amendments, except those made by paragraphs 3(b), 4(f) and 11(a)(i) and (b)(i) and (iv) of the Schedule, correct errors, including errors of omission. Some of those correcting amendments have resulted in the insertion of new rules or paragraphs. In particular—

the amendment made by paragraph 4(a) inserts a new paragraph (4) in rule 2 of Part 3 (award on ill-health retirement) to provide for the calculation of ill-health awards payable in the case of a firefighter member who is entitled to two pensions by virtue of rule 7 of that Part;

the amendment made by paragraph 4(h)(i) inserts new paragraphs (8A) to (8C) in rule 9 of Part 3 (commutation: general) to provide for account to be taken of any earlier commutation. This is to ensure that any subsequent pension and lump sum is reduced

accordingly where an ill-health pension or a deferred pension that has been paid early is terminated under Part 9;

the amendment made by paragraph 7(c) inserts new rule 6 in Part 6 (pension sharing on divorce) which allows for the payment of a lump sum death grant where a pension credit member dies before any benefits under the Scheme become payable. The grant is to be paid to the deceased member's personal representatives.

The amendments made by paragraphs 3(b), 4(f) and 11(a)(i) and (b)(i) and (iv) of the Schedule reflect policy changes since the introduction of the Scheme. Those made by paragraphs 4(f), partially, and 11(b)(iv) have effect from 1st October 2006. The others have effect from 1st July 2007.

The amendment made by paragraph 4(f) of the Schedule, in so far as it inserts new rule 7A, and so much of new rule 7C as relates to rule 7A, into Part 3 of the Scheme, relates to the discontinuance, with effect from the end of June 2007, of long service increments payable to firefighters who have at least 15 years' continuous service at that point. The amount of the increment, which was pensionable, was frozen, with effect from 7th November 2003, at the annual rate of £990 and reduced, with effect from 1st October 2006, to an annual rate of £495 (with some interim and transitional payments). The effect of the amendment is that the pension of a firefighter member who was entitled to a long service increment before 1st July 2007 and retires or becomes entitled to a deferred pension after 30th September 2006 but before 1st October 2007, will be calculated without regard to the reduction in the annual rate.

The amendment made by paragraph 3(b) of the Schedule, in so far as it inserts new rule 7B, and so much of new rule 7C as relates to rule 7B, into Part 3 of the Scheme, and the amendment made by paragraph 5(f), are consequential on the introduction by the National Joint Council for Local Authority Fire and Rescue Services, with effect from 1st July 2007, of a new scheme of payments in respect of continual professional development. Under that scheme the payments are subject to annual review and therefore temporary in nature. For that reason, they would not ordinarily be regarded as pensionable for the purposes of the Scheme. However, the amendment made by paragraph 11(a)(i) has the effect of making the payments part of pensionable pay. This attracts, among other provisions, those of rule 3 of Part 11 of the Scheme, which require the making of pension contributions in respect of pensionable pay. But the amendment made by paragraph 11(b)(i) provides for payments in respect of continual professional development to be disregarded for the purposes of determining the amount of final pensionable pay (on which the amount of the ordinary pension is based).

The amendment to rule 2(5) in Part 2 of the Scheme, made by paragraph 3(b) of the Schedule to this Order, ensures that a person cannot make an election to discontinue pension contributions only in respect of additional pension benefit under rule 7B.

A full impact assessment has not been produced for this Order, as no impact on the private or voluntary sectors is foreseen.

The amendments made by this Order have been incorporated in an informal composite version of the Scheme which may be viewed at www.communities.gov.uk/firepensions