

2016 No.

PUBLIC SERVICE PENSIONS, ENGLAND

**The Firefighters' Compensation Scheme and Pension Scheme
(Amendment) (England) Order 2016**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

This Order is made in exercise of the powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004(a), sections 26(1) to (5) of the Fire Services Act 1947(b) and section 12 of the Superannuation Act 1972(c), as applied by section 16(3) of that Act.

Before making this Order, the Secretary of State consulted such persons as the Secretary of State considered appropriate in accordance with section 34(5) of the Fire and Rescue Services Act 2004.

The Secretary of State makes the following Order:

Citation, commencement and application

- 1.—(1) This Order may be cited as the Firefighters' Compensation Scheme and Pension Scheme (Amendment) (England) Order 2016.
- (2) This Order comes into force on [date].
- (3) The amendments made by this Order have effect from 1st April 2015.
- (4) This Order applies in relation to England only(d).

(a) 2004 c.21; the powers conferred by sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in Welsh Ministers so far as they are exercisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of section 62 of that Act. 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. Powers under sections 34 and 60 of the Fire and Rescue Services Act 2004 are now vested in Scottish Ministers so far as they are exercisable in relation to Scotland (S.I. 2005/849). Section 34 was amended by paragraph 27 of Schedule 8 to the Public Service Pension Act 2013 (c.25).

(b) 1947 c.41; repealed by sections 52 and 54 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21). Subsections (1) to (5) of section 26 continue to have effect for the purposes of the Firefighters' Pension Scheme, in relation to England and Scotland by virtue of S.I. 2004/2306 and in relation to Wales by virtue of S.I. 2004/2917. The name of the scheme was changed to the Firefighters' Pension Scheme by S.I. 2004/2306. Section 26 of the Fire Services Act 1947 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), sections 100 and 101 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(2) of the Magistrates' Courts Act 1980 (c.43), section 1 of the Police and Firemen's Pensions Act 1997 (c.52), section 256 and Schedule 25 to the Civil Partnership Act 2004 (c.33), and S.I. 1976/551.

(c) 1972 c.11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). Section 16 was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 but continues to have effect, in relation to England and Scotland, for the purposes of the scheme set out in the Firemen's Pension Scheme Order 1992.

(d) The Secretary of State's functions under section 26 of the Fire Services Act 1947, in so far as they were exercisable in relation to Scotland, were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and

Amendment of the Firemen's Pension Scheme Order 1992

2.—(1) Schedule 2 to the Firemen's Pension Scheme Order(a) is amended as follows.

(2) In Part B (personal awards), in rule B1A(3)(b) (continuous service pension)—

- (a) in sub-paragraph (a) for “paragraph (1)(a)”, substitute “paragraph (1)(b)”;
- (b) in sub-paragraph (b) before “ascertained”, insert “is”.

(3) In Part C (awards on death-spouses), in rule C9 (effect of remarriage)—

- (a) in paragraph (1), at the beginning insert, “subject to paragraph (3)”;
- (b) in paragraph (2), at the beginning insert “subject to paragraph (3)”;
- (c) after paragraph (2), insert—

“(3) Paragraphs (1) and (2) of this rule do not apply if the person entitled to a pension or gratuity under this Part (“P”) marries, remarries, forms a civil partnership or a subsequent civil partnership on or after 1st April 2015 and one of the conditions set out in paragraph (4) is satisfied.

(4) The conditions are that—

- (a) the deceased partner of P (“D”) died as a result of an injury, received in the exercise of D's duties as a regular firefighter; or
- (b) D died as a result of injuries sustained while on a journey necessary to enable D to report for duty or return home after duty.

(4) In Part 2A(c) (continuous service pension) of Schedule 2 (personal awards), for “40 years”, where the words occur for the first time, substitute “30 years”.

Amendment of the Firefighters' Compensation Scheme (England) Order 2006

3.—(1) Schedule 1 to the Firefighters' Compensation Scheme (England) Order 2006(d) is amended as follows.

(2) Subject to the saving provision in article 4, in Part 3 (awards on death: spouses and civil partners), omit rule 5 (effect of new relationship).

Saving

4. A fire and rescue authority may pay the whole or part of the pension or gratuity for such period as they see fit, where rule 5(1) and (2) (effect of new relationship) of Part 3 (awards on death: spouses and civil partners) of the Firefighters' Compensation Scheme (England) Order 2006 applied to a person who married, remarried, formed a civil partnership or a subsequent civil partnership before 1st April 2015 and that marriage or civil partnership is dissolved or the other party to it dies.

Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750). The Secretary of State's functions under section 3(5) of the Fire Services Act 1947 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 the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry for the Fire Services Act 1947 in Schedule 1 to that Order. 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. 2004 c.2.

- (a) S.I. 1992/129; relevant amendments were made by [S.I. 2012/953 and 2014/446][check final sections and amends]
- (b) Rule B1A(3) inserted by S.I. 2015/589.
- (c) Part 2A inserted by S.I. 2015/589.
- (d) S.I. 2006/1811; amended by S.I. 2006/3434, 2010/234, 2014/447, 2015/590.

Transitional provision

5.—(1) This article applies to the amendment made by article 2(4) of this Order to Part 2A (continuous service pension) of Schedule 2 (personal awards) of the Firemen’s Pension Scheme Order 1992 which clarifies a reference in the calculation of a continuous service pension of certain members of the pension scheme set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992.

(2) Any person who is placed in a worse position than he or she would have been in if an amendment to which this article applies had not been made in relation to any pension which is being paid or may become payable to that person may elect that the amendment shall not apply in relation to that pension(a).

(3) Any such election shall be made by giving written notice to the relevant fire and rescue authority within the period of 12 months starting with the date on which this Order comes into force.

Signed by authority of the Secretary of State

Minister of State

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters’ Pension Scheme 1992 (set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992) (the “Firefighters’ Pension Scheme”) as it has effect in England. The Order has effect from 1st April 2015. The power to give the Order retrospective effect is conferred by section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

Article 2 makes minor clarifications and sets out the circumstances in which a surviving spouse or civil partner’s entitlement to a pension or gratuity under Part C9 of the Firefighters’ Pension Scheme continues following the spouse’s marriage, remarriage, formation of a civil partnership or subsequent civil partnership on or after 1st April 2015. It also makes minor amendments to clarify references which includes an amendment to Part 2A (continuous service pension) of Schedule 2 of the Firefighters’ Pension Scheme.

The Order also amends the Firefighters’ Compensation Scheme (England) Order 2006 (“the 2006 Compensation Scheme”). Article 3 revokes Part 3, rule 5 of the 2006 Compensation Scheme and article 4 provides that the fire and rescue authority may continue to pay the whole or part of the pension or gratuity for such period as they see fit to a surviving spouse who is entitled to a pension or gratuity under Part 3, to whom rule 5(1) and (2) or Part 3 applied and whose marriage, remarriage, civil partnership or subsequent civil partnership formed before 1st April 2015, in the event that the marriage or civil partnership subsequently dissolves or the other party to it dies.

Article 5 provides a right for certain persons in respect of pensions in payment, and pensions which may become payable in respect of persons who have ceased to be in service or have died, to elect that the amendment made by article 2(4) of this Order shall not apply to them on the basis that the amendment places them in a worse position than they would have been in if the amendment had not applied in relation to the pension payable to that person under the Firefighters’ Pension Scheme. Any such election must be made within 12 months of the coming into force of this Order.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen and the impact on the public sector is minimal.

(a) See section 12(4A) of the Superannuation Act 1972 which limits the effect of any such election in certain circumstances.