

2010 No. 332

FIRE SERVICES

PENSIONS

**The Firefighters' Pension Scheme Amendment (Scotland)
(No. 2) Order 2010**

Made - - - - *16th September 2010*
Laid before the Scottish Parliament *21st September 2010*
Coming into force - - *31st October 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 26(5) of the Fire Services Act 1947(a), sections 12 and 16 of the Superannuation Act 1972(b) and all other powers enabling them to do so.

Citation, commencement, effect and extent

1.—(1) This Order may be cited as the Firefighters' Pension Scheme Amendment (Scotland) (No. 2) Order 2010.

(2) This Order comes into force on 31st October 2010, and, subject to paragraph (3), has effect from 1st April 2010(c).

(3) Paragraph 7 of the Schedule has effect from 31st October 2010.

(4) This Order extends to Scotland only.

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- (a) 1947 c.41 ("the 1947 Act"); repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21).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 to have effect 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 article 3 of the Firefighters' Pension Scheme (England and Scotland) Order 2004 S.I. 2004/2306. The name of the scheme was changed to the Firefighters' Pension Scheme by article 4(1) of S.I. 2004/2306. 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), article 2 of the Social Security (Modification of Fire Services Act 1947) Order 1976 (S.I. 1976/551), section 1 of the Police and Firemen's Pensions Act 1997 (c.52) and section 256 of, and Schedule 25 to, the Civil Partnership Act 2004 (c.33). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, (S.I. 1999/1750) and article 2 of and the Schedule to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006, (S.I. 2006/304).
- (b) 1972 c.11; section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). The functions of the Secretary of State as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999, article 2 and Schedule 1 (S.I. 1999/1750). Section 16 applies section 12 with the necessary modifications to orders under section 26 of the Fire Services Act 1947. Section 16 is repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c.21) but continues to have effect, for the purposes of the Firefighters' Pension Scheme, by virtue of article 3 of S.I. 2004/2306.
- (c) Retrospective effect is permitted by sections 12(1) and 16(3) of the Superannuation Act 1972 (c.11) ("the 1972 Act"). Section 16(3) of the 1972 Act continues to have effect for the purposes of the Firefighters' Pension Scheme by virtue of article 3 of S.I. 2004/2306.

Amendment of the Firefighters Pension Scheme Order 1992

2.—(1) Schedule 2 to the Firefighters' Pension Scheme Order 1992(a) is amended in accordance with the Schedule to this Order.

St Andrew's House,
Edinburgh
16th September 2010

JOHN SWINNEY
A member of the Scottish Executive

(a) S.I. 1992/129, amended by S.I. 1997/2309 and 2851, 1998/1010, 2001/3649 and 2005/3228, and S.S.I. 2001/310, 2004/385, 2005/566, 2006/342, 2007/200, 2008/161, 2009/184 and 2010/66.

SCHEDULE

Article 2

AMENDMENT OF THE FIREFIGHTERS' PENSION SCHEME

1. In rule A4 (application to temporary employment connected with fire services) in paragraph (3)(e), for the words “Secretary of State”(a) substitute “fire and rescue authority that employed the person immediately before the commencement of the relevant employment”.

2. In rule A5 (application to permanent employment as an instructor), in paragraph (3)(c)(b), for the words “Secretary of State” substitute “fire and rescue authority that employed the person immediately before the commencement of the relevant employment”.

3. In rule B3(c) (ill health awards), in paragraph (7), for the words “12 month period” substitute “period of not less than 12 consecutive months beginning with the date on which the issue of his capacity for employment began”.

4. In rule F2 (current service)—

(a) in paragraph 4(b)(d), for the words from “if a notional funding system applied” to the end of paragraph (4)(b), substitute “as employer contributions under rule LA3 for that period.”.

(b) for paragraph (5) substitute—

“(5) A fire and rescue authority may pay the amount notified under sub-paragraph (b) of paragraph (4) on behalf of the firefighter and, where they do so, the requirements of that sub-paragraph shall cease to apply.”.

5. For rule F8 (transfer payments between fire and rescue authorities), substitute—

“Transfer payments to fire and rescue authorities in England, Wales and the Northern Ireland Fire and Rescue Service

F8.—(1) Where, on or after 1st April 2010, a person who retired from a Scottish fire and rescue authority (“the first employment”)—

- (a) takes up employment as a regular firefighter with a fire and rescue authority in England, Wales or the Northern Ireland Fire and Rescue Service; and
- (b) becomes entitled under rule F4 (previous service reckonable on payment) to reckon as pensionable service the period he was entitled to reckon when he retired,

the authority responsible for the person in the first employment must, subject to paragraph (2), pay to the fire and rescue authority in England, Wales or the Northern Ireland Fire and Rescue Service (as the case may be) a sum calculated in accordance with Part III of Schedule 6.

(2) No sum may be paid in respect of any pension credit rights.”.

(a) The references in the Firefighters' Pension Scheme Order 1992 to the “Secretary of State” are to be read as references to “Scottish Ministers” by virtue of section 117 of the Scotland Act 1995. However section 117 does not amend those references.

(b) Paragraph (3)(c) of Rule A5 was amended by S.S.I. 2005/566.

(c) Rule B3 was substituted by S.S.I. 2006/342.

(d) Paragraphs (4) and (5) were substituted by S.S.I. 2006/342.

6. After Rule F8 insert—

“Transfer of pension history between Scottish Fire and Rescue Authorities

F8A.—(1) Subject to paragraph (7), where a firefighter member—

- (a) leaves the employment of a Scottish fire and rescue authority (“the former authority”), and
- (b) without a break of service, takes up employment as a firefighter with another Scottish fire and rescue authority (“the new authority”),

the former authority must, not later than six months after he left their employment, supply the new authority with a certificate showing the pensionable service and qualifying service he was entitled to reckon as at the date on which he left the former authority’s employment (“the material date”).

(2) At the same time as the former authority supply a certificate under paragraph (1), they must send a copy of it to the person concerned, together with a statement of its effect on completion of the transfer.

(3) If the person concerned is dissatisfied with the information specified in a certificate under paragraph (1), he may, within three months after being supplied with a copy of it, ask his former authority to determine the accuracy of the information contained in it.

(4) A person who makes a request under paragraph (3) must send a copy of it to the new authority.

(5) A request under paragraph (3) must be considered by means of the arrangements for the resolution of disagreements implemented by the authority pursuant to the requirements of sections 50, 50A and 50B of the Pensions Act 1995^(a) (resolution of disputes); and the authority must either confirm the certificate or issue a new certificate.

(6) If the person concerned does not make a request under paragraph (3), the certificate as supplied, and if he does make such a request, the certificate as confirmed, or the new certificate issued (as the case may be), is conclusive as to the pensionable service he was entitled to reckon at the material date.

(7) If, after the material date but before a certificate has been supplied under paragraph (1), the person concerned—

- (a) claims a pension or lump sum under this Scheme,
- (b) claims a pension or lump sum under the Compensation Scheme, or
- (c) dies,

that paragraph ceases to apply.”.

7. In rule H1 (determination by fire authority)^(b) after paragraph (2)(b) insert—

“(c) whether the person would be able to undertake regular employment within the meaning given by rule B3.”.

(a) 1995 c.26. Sections 50, 50A and 50B were substituted for section 50 by section 273 of the Pensions Act 2004 c.35. The arrangements that apply for the purposes of the Scheme take the form of a disputes resolution procedure. The procedure is set out in Fire Services Circular 2/1997 issued by the Home Office on 4th February 1997.

(b) Rule H1 was amended by S.S.I. 2005/566 and 2006/342.

8. After Part L (payments of awards and financial provisions), insert the following Part—

“PART LA
FIREFIGHTERS’ PENSION ACCOUNT

Establishment, maintenance and operation of a Firefighters’ Pension Account

LA1.—(1) Every fire and rescue authority must establish a separate account for firefighters’ pensions (to be known as the Firefighters’ Pension Account).

(2) A Firefighters’ Pension Account must be established for the financial year ending on 31st March 2011 and maintained for each subsequent financial year.

(3) Every fire and rescue authority must keep accounts in respect of all payments into or out of its Firefighters’ Pension Account.

(4) Such accounts must be maintained in accordance with proper accounting practices

(5) Except as may otherwise be provided in this Order—

(a) any sum paid or repaid to a fire and rescue authority under the provisions of this Order, or any order mentioned in paragraph (6), shall be receivable into the authority’s Firefighters’ Pension Account; and

(b) any sum paid or repaid by a fire and rescue authority under the provisions of this Order, or any order mentioned in paragraph (6), shall be payable out of the authority’s Firefighters’ Pension Account.

(6) For the purposes of paragraph (5), the orders mentioned in this paragraph are any other previous orders making provision for firefighters’ pensions, in connection with rights acquired and liabilities incurred under such orders (including such rights and liabilities which have been transferred to a fire and rescue authority).

Particular payments into and out of the Firefighters’ Pension Account

LA2.—(1) Without prejudice to the generality of rule LA1 (5), the following payments which are receivable by a fire and rescue authority are to be paid into the authority’s Firefighters’ Pension Account—

(a) pension contributions receivable from a firefighter under rules G2(1)(a), G2A(1)(b) and G4;

(b) sums receivable from a firefighter under rule F2(c) paragraphs (4) or (5);

(c) sums receivable from a firefighter under rule F4(d) or F5(e);

(d) transfer values receivable under rule F6A(f);

(e) transfer values receivable under rule F7(g);

(f) sums receivable from a fire and rescue authority in England or Wales or the Northern Ireland Fire Service under the equivalent of rule F8 as it has effect in England, Wales and Northern Ireland; and

(g) sums receivable from elections made under rule G6(h) or G7(i).

(a) Rule G2 was amended by S.S.I. 2006/342.

(b) Rule G2A was inserted by S.S.I. 2004/365 and then amended by S.S.I. 2005/566.

(c) Rule F2 was amended by S.S.I. 2004/385 and 2005/566.

(d) Rule F4 was amended by S.S.I. 2005/566.

(e) Rule F5 was amended by S.S.I. 2006/342, 2005/566 and 2006/342.

(f) Rule F6A was inserted by S.I. 1997/2851.

(g) Rule F7 was amended by S.S.I. 2001/310, 2005/566 and 2006/342.

(h) Rule G6 was amended by S.S.I. 2005/566 and 2001/310.

(i) Rule G7 was amended by S.S.I. 2001/310, 2005/566 and 2006/342.

(2) Without prejudice to the generality of rule LA1 (5), the following payments which are payable by a fire and rescue authority are to be paid out of the authority's Firefighters' Pension Account—

- (a) awards payable under Parts B, C, D, E, N(a) and P(b);
- (b) sums payable under rule G3(4)(a); and
- (c) transfer values payable under rules F8 and F9.

Fire and rescue authority contributions

LA3.—(1) In each financial year a fire and rescue authority must transfer from the Firefighters' Operating Account into the Firefighters' Pension Account contributions ("fire and rescue authority employer contributions") at the rate of 21.8% of the pensionable pay of a firefighter in respect of any period during which pension contributions are paid by the firefighter under rule G2(1)(c) or are treated as being so paid.

(2) For the purposes of paragraph (1), the periods during which pension contributions are treated as being paid by a firefighter are—

- (a) any period of unpaid maternity leave which falls within the first 26 weeks of any period of maternity leave;
- (b) any period reckonable as pensionable service in accordance with rule F1 (reckoning of and certificates as to pensionable service); and
- (c) any period during which pension contributions are not or have not been paid by a serviceman in the circumstances mentioned in rule I7(2).

(3) Subject to paragraph (4) in this rule, "pensionable pay" has the meaning assigned to it by rule G1.

(4) Where the amount of a firefighter's pensionable pay in respect of a period is reduced due to one of the circumstances mentioned in paragraph (5), that firefighter must be treated for the purposes of this rule as if that firefighter's pensionable pay were not so reduced.

(5) The circumstances mentioned in this paragraph are that the firefighter has taken a period of sick leave, maternity leave, paternity leave, adoption leave or any other period of leave which was paid at a reduced rate.

(6) Where a fire and rescue authority repays the pension contributions of a firefighter under rule G3(4)(a), the fire and rescue authority must also transfer from its Firefighters' Pension Account into its Firefighters' Operating Account an amount equal to the aggregate of the fire and rescue authority employer contributions it has transferred in accordance with paragraph (1) in respect of such a firefighter.

(7) Where a firefighter retires with an entitlement to an ill-health pension under rule B3, the fire and rescue authority must transfer from its Firefighters' Operating Account into the Firefighters' Pension Account an amount calculated in accordance with paragraph (8).

(8) The amount referred to in paragraph (8) is—

- (a) in the case of a lower tier award made under rule B3(5)(a) an amount equal to twice the average pensionable pay for the firefighter concerned; and
- (b) in the case of a higher tier award made under rule B3(5)(b) an amount equal to four times the average pensionable pay for the firefighter concerned.

(9) For the purposes of paragraph (8)(b), if some or all of the service by which the firefighters' pensionable service is reckonable was part-time, that firefighter must be treated as if such service had been full-time.

(a) Part N was inserted by S.S.I. 2001/310 and amended by S.S.I. 2005/566 and 3228.

(b) Part P was inserted by S.S.I. 2009/184.

(c) Rule G2 was amended by S.S.I. 2006/342.

(10) Where a fire and rescue authority continues to pay a pension in whole or in part in a case where they have a discretion to withdraw the whole or any part of that pension under rule K4 (withdrawal of pension during service as a regular firefighter) the fire and rescue authority must in a financial year transfer from the Firefighters' Operating Account into the Firefighters' Pension Account an amount equal to the amount of pension paid during that financial year to that firefighter.

(11) Where a fire and rescue authority pays an amount under rule F2(5), the fire and rescue authority must in a financial year transfer from the Firefighters' Operating Account into the Firefighters' Pension Account an amount equal to the amount so paid.

Awards under the Firefighters' Compensation Scheme (Scotland) Order 2006

LA4.—(1) Subject to paragraph (2), awards payable by a fire and rescue authority under the Compensation Scheme and the corresponding provisions of this Order must be paid out of the authority's Firefighters' Operating Account.

(2) This paragraph applies where a person described in paragraph (3) would be entitled to receive, in respect of any particular period, payments on account of—

- (a) an award under the provisions of the Compensation Scheme or under the corresponding provisions of this Order mentioned in paragraph (4); and
- (b) an award under this Order,

but for the prevention of duplication provisions.

(3) The person referred to in paragraph (2) is either—

- (a) a firefighter; or
- (b) in circumstances where a firefighter has died, the spouse, civil partner, child or dependent of that firefighter.

(4) The provisions of the Compensation Scheme mentioned in this paragraph together with the corresponding provisions of this Order are—

- (a) part 3, rule 1 (special award for spouse or civil partner) of the Compensation Scheme (rule C2 (spouse's special award) of this Order)(a);
- (b) part 3, rule 2 (augmented award for spouse or civil partner) of the Compensation Scheme (rule C3 (spouse's augmented award) of this Order);
- (c) part 4, rule 1 (child's special allowance) of the Compensation Scheme (rule D1 (child's ordinary allowance) of this Order);
- (d) part 5, rule 1 (child's special allowance) of the Compensation Scheme (rule E1 (lump sum death grant) of this Order);
- (e) part 8, rule 1 (award for or in relation to employee who is not a regular or retained firefighter) of the Compensation Scheme (rule J3 (whole-time member of brigade who is not a regular firefighter) of this Order)(b); and
- (f) part 8, rule 2 (award for or in relation to a retained or volunteer firefighter) of the Compensation Scheme (rule J4 (part-time member of brigade) of this Order).

(5) Where paragraph (2) applies—

- (a) the award payable to such a person under this Order shall be payable by a fire and rescue authority out of its Firefighters' Pension Account; and
- (b) the award payable to such a person under the Compensation Scheme (or the corresponding provisions of this Order) shall be payable by a fire and rescue authority in part out of the Firefighters' Pension Account and in part out of the Firefighters' Operating Account, in accordance with paragraphs (6) and (7).

(a) Rules C2 and C3 were omitted by S.S.I. 2006/342, but payments in relation to awards under those Rules continue to be made.

(b) Rules J3 and J4 were omitted by S.S.I. 2006/342, but payments in relation to awards under those Rules continue to be made.

(6) The part of the award which is equal to the award to which such person would be entitled under this Order, but for the prevention of duplication provisions, shall be payable by the fire and rescue authority out of the Firefighters' Pension Account.

(7) The remainder of the award shall be payable by the fire and rescue authority out of the Firefighters' Operating Account.

(8) This rule is without prejudice to the operation of the prevention of duplication provisions.

(9) In this rule "the prevention of duplication provisions" means rule L4 (prevention of duplication) of this Order and rules 3 (prevention of duplication), 4 (prevention of duplication: other injury awards for persons who are both regular and retained firefighters) and 5 (prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters) of Part 10 of the Compensation Scheme.

Transfers between the Firefighters' Pension Account and the Firefighters' Operating Account.

LA5.—(1) Where, in respect of any financial year, the amount shown in the accounts of the Firefighters' Pension Account as expended (including transfers payable) exceeds the amount shown in those accounts as receivable (including transfers receivable), the fire and rescue authority must transfer from its Firefighters' Operating Account to its Firefighters' Pension Account an amount equal to the difference between those amounts.

(2) Where, in respect of any financial year, the amount shown in the accounts for the Firefighters' Pension Account as receivable (including transfers receivable) exceeds the amount shown in those accounts as expended (including transfers payable), the fire and rescue authority must transfer from its Firefighters' Pension Account into its Firefighters' Operating Account an amount equal to the difference between those amounts.

(3) For the purposes of this rule, no account shall be taken of payments made by the Scottish Ministers or the fire and rescue authority under rule LA6.

Effect of transfers between the Firefighters' Pension Account and the Firefighters' Operating Account

LA6.—(1) Where—

- (a) a fire and rescue authority's audited accounts for the previous financial year show that the authority has transferred an amount into the Firefighters' Pension Account under rule LA5(1); or
- (b) on the basis of information provided to the Scottish Ministers under rule LA7, they are of the opinion that a fire and rescue authority is likely to make a transfer of an amount into its Firefighters' Pension Account in respect of any financial year under rule LA5(1),

the Scottish Ministers must take that amount into account when deciding on future funding for pensions for that authority and may pay to the authority a sum not exceeding that amount out of moneys provided by Parliament.

(2) Where—

- (a) a fire and rescue authority's audited accounts show that the authority has transferred an amount into its Firefighters' Operating Account under rule LA5(2); or
- (b) on the basis of information provided to the Scottish Ministers under rule LA7, they are of the opinion that a fire and rescue authority is likely to make a transfer of an amount into its Firefighters' Operating Account in respect of any financial year under rule LA5(2),

the Scottish Ministers must take that amount into account when deciding on future funding for pensions for that authority and may require the authority to pay a sum not exceeding that amount into the Scottish Consolidated Fund.

Provision of information

LA7.—(1) The Scottish Ministers may by written notice to a fire and rescue authority require the fire and rescue authority to prepare and send to them such information, accounts and reports—

- (a) in respect of the authority’s Firefighters’ Pension Account; or
- (b) relevant to the exercise of the Scottish Ministers’ functions under rule LA6,

as they may specify.

(2) Such notice may specify the form of the information, accounts and reports and the times at which the fire and rescue authority shall send them to the Scottish Ministers.

(3) Without prejudice to the generality of paragraph (1), the Scottish Ministers may require the fire and rescue authority to provide—

- (a) estimates of the expenditure and income of that authority’s Firefighters’ Pension Account; and
- (b) accounts (whether audited or unaudited) relating to that authority’s Firefighters’ Pension Account.

(4) A fire and rescue authority must respond to a notice under paragraph (1) within such a period as the Scottish Ministers may specify in that notice, or within such longer period as they may in any particular case allow.

Further sums payable out of the Firefighters’ Operating Account

LA8.—(1) Any charge, interest or penalty payable by a fire and rescue authority in connection with this Order shall be payable out of the Firefighters’ Operating Account.

(2) Any administrative cost arising from administering pension arrangements under this Order, the Compensation Scheme Order, and any other previous orders making provision for firefighters pensions shall be payable out of the Firefighters’ Operating Account.”.

9. In Schedule 1(a) (interpretation)in Part I (glossary of expressions)—

- (a) after the expression “Eligible person”, insert—

““Financial year”	The period of twelve months ending on 31st March.”
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- (b) after the expression “fire and rescue authority”, insert—

““fire and rescue authority employer contributions”	Construe in accordance with rule LA3(1).
“Firefighters’ Operating Account”	In relation to each fire and rescue authority, means the general account kept and maintained by that authority by virtue of section 93, as read with

(a) The Firefighters’ Pension Scheme is set out in Schedule 2 to S.I. 1992/129. The Scheme itself has Schedules, the first of which deals with interpretation. Schedule 1 to the Scheme has been relevantly amended by S.I. 2001/3691 and 2005/3228, and S.S.I. 2004/385, 2005/566, 2006/342 and 2007/200.

“Firefighters’ Pension Account”	<p>section 106, of the Local Government (Scotland) Act 1973(a).</p> <p>In relation to each fire and rescue authority, means the pension account to be established by that authority in accordance with rule LA1(1).”</p>
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(c) after the expression “Principal Act”, insert—

““proper accounting practices”	has the meaning given by section 12, as read with section 14, of the Local Government in Scotland Act 2003 (b) .”
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(a) 1973 c.65. Section 93 of the Local Government (Scotland) Act 1973 was amended by Schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39) and section 41 of the Local Government in Scotland Act 2003 (asp 1); section 106 of that Act of 1973 was amended by Schedule 14 of that Act of 1994 and Schedule 1 of the Transport (Scotland) Act 2005 (asp 12).

(b) 2003 asp 1.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Firefighters' Pension Scheme which is set out in Schedule 2 to the Firefighters' Pension Scheme Order 1992 and, with the exception of paragraph 7 of the Schedule to this Order, has effect from 1st April 2010.

This Order introduces provisions supporting the introduction of a new funding system for firefighter pensions.

A new Part LA is inserted into the Firefighters' Pension Scheme by paragraph 8 of the Schedule to this Order. Part LA makes provision for—

- the establishment and maintenance of a Firefighters' Pension Account and the payments that are to flow into and out of that Account (rules LA1 to LA3);
- the treatment of awards made under the Compensation Scheme for firefighters in terms of the accounts from which such awards are to be made (rule LA4);
- transfers between a fire and rescue authority's Firefighters' Pension Account and Firefighters' Operating Account and the effect of those transfers (rules LA5 and LA6); and
- a requirement for fire and rescue authorities to provide information etc. in relation to the Firefighters' Pension Account to the Scottish Ministers (rule LA7).

Paragraphs 5 and 6 of the Schedule to this Order make provision in relation to the transfer of pension history information and sums where a firefighter moves from one fire and rescue authority to another.

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

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