1953 No. 448 (S. 42)

The Superannuation (Fire Brigade and other Local Government Service) (Scotland) Interchange Rules, 1953

Made - - - -	12*th March*, 1953
Laid before Parliament	17*th March*, 1953
Coming into Operation	18*th March*, 1953

In exercise of the powers conferred on me by sections 2 and 15 of the Superannuation (Miscellaneous Provisions) Act, 1948(**a**), and of all other powers enabling me in that behalf, I hereby make the following rules :—

1.—(1) These rules may be cited as the Superannuation (Fire Brigade and other Local Government Service) (Scotland) Interchange Rules, 1953, and shall come into operation on the 18th day of March, 1953.

(2) In these rules, the following expressions have the meanings hereby assigned to them :—

" the Act " means the Superannuation (Miscellaneous Provisions) Act, 1948 ;

" the Act of 1937 " means the Local Government Superannuation (Scotland) Act, 1937(**b**) ;

" fireman " means a member of a fire brigade of a class prescribed by the Firemen's Pension Scheme for the purposes of section 2 of the Fire Services Act, 1951(**c**) ;

" the Firemen's Pension Scheme " means the scheme for the time being in force under section 26 of the Fire Services Act, 1947(**d**) ;

" national service ", in relation to any person means service of a description specified in the First Schedule to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951(**e**), and includes any period immediately following the termination thereof during which the person with the consent of the authority or body by whom he was employed before undertaking such service continues in similar service ; and

" war service ", in relation to any person, means war service within the meaning of the Local Government Staffs (War Service) Act, 1939(**f**), but does not include, in the case of a person who before the termination of his war service made a claim under section 10 of the Act of 1937 or any corresponding provision of a local Act scheme for the return of contributions made by him for superannuation purposes, any part of his war service after the date on which the claim was made.

(3) The Interpretation Act, 1889(**g**), applies to the interpretation of these rules as it applies to the interpretation of an Act of Parliament.

2.—(1) Subject as hereinafter provided, this rule shall apply to any person who enters, or has entered before the date of the coming into operation of these rules, employment as a fireman, and who is a person who falls under any one of the following classes :—

(*a*) persons who within a period of twelve months prior to such entry have been in employment by virtue of which they were or were deemed to be contributory employees or local Act contributors :

(a) 11 & 12 Geo. 6. c. 33. (b) 1 Edw. 8 & 1 Geo. 6. c. 69. (c) 14 & 15 Geo. 6. c. 27.
(d) 10 & 11 Geo. 6. c. 41. (e) 14 & 15 Geo. 6. c. 65. (f) 2 & 3 Geo. 6. c. 94.
(g) 52 & 53 Vict. c. 63.

(*b*) persons who within a period of six months prior to the said date have been engaged in war service, having for the purpose of such service left such employment as is specified in sub-paragraph (*a*) of this paragraph:

(*c*) persons who within a period of six months prior to the said date have been engaged in national service immediately after leaving such employment as is specified in sub-paragraph (*a*) of this paragraph:

Provided that this rule shall not apply to any person who has become entitled to any benefit under the Act of 1937 or, as the case may be, under any local Act scheme, other than the return of contributions.

(2) (*a*) Any person who satisfies the requirements of the last foregoing paragraph may give notice to the authority by whom he is employed as a fireman that he desires these rules to apply to him.

(*b*) Any such notice as is referred to in the last foregoing sub-paragraph shall be given by the person concerned in writing within three months after the date on which he entered employment as a fireman, or where the said date preceded the date of the coming into operation of these rules, within six months after the latter date.

(3) Where a person to whom this rule applies gives such notice as is referred to in the last foregoing paragraph, and, if he ceased to hold his former employment before the date of the coming into operation of these rules, the authority maintaining the fund to which he was a contributor consent, the like transfer value shall be payable to the fire authority out of the fund to which he was formerly a contributor by the authority maintaining the last mentioned fund as would have been payable under the regulations for the time being in force by virtue of section 24 of the Act of 1937 had the person become a contributory employee, less an amount equal to any sum which the authority maintaining the fund may become liable to pay by way of income tax in respect of the amount transferred by way of transfer value.

(4) This rule shall not apply in relation to any person unless within three months after the date on which he entered employment as a fireman, or, where that date preceded the date of the coming into operation of these rules, within six months after the latter date, he pays to the authority by whom he is employed as a fireman an amount equal to any sum paid to him by way of a return of contributions on ceasing to hold his former employment and undertakes to pay to them a sum equal to the balance of any liability outstanding immediately before he entered employment as a fireman under the provisions of proviso (ii) to paragraph (*b*) of subsection (2) of section 8 of the Act of 1937.

(5) This rule shall not apply in relation to any person who entered employment as a fireman before the date of the coming into operation of these rules unless he ceased to hold his former employment not earlier than the fourth day of February, 1948, and has not ceased to be in employment as a fireman before the date of the coming into operation of these rules otherwise than on transfer from one fire brigade to another with the consent of the authority maintaining the brigade from which he transferred.

(6) This rule shall not apply in relation to any person who, immediately before he entered employment as a fireman, was a member of the National Fire Service and was pensionable in respect of that service by virtue of the Local Government Staffs (War Service) Act, 1939.

(7) The transfer value payable in respect of a person who entered employment as a fireman more than twelve months before the date of the coming into operation of these rules shall be calculated by reference to his age at that date.

(8) The reference in this rule to a period of twelve months from the date on which a person ceased to be employed shall be construed in relation to a person to whom section 6 of the Act has become applicable as a reference to a period of five years from that date or such longer period as the Secretary of State may in any particular case allow.

(9) The transfer value payable under this rule shall be calculated as if the words " other than such service as is mentioned in proviso (*a*) to that subsection " had been omitted from the definition of " service " in paragraph 1 of the First Schedule to the Local Government Superannuation (Transfer Value) (Scotland) Regulations, 1939(**a**), and as if there had been no reference in that definition to a person who had been an established officer or servant within the meaning of the Asylum Officers' Superannuation Act, 1909(**b**) (hereafter in this rule referred to as " the Act of 1909 ").

(10) Where the officer had before entering local government service been an established officer or servant within the meaning of the Act of 1909, as extended by any subsequent enactment, and had been a person to whom any regulations for the time being in force under the Second Schedule to the Act of 1937, whether as originally made or as amended by any statutory provision, had been applicable, and where the body by whom he was last employed while subject to the Act of 1909 would, if he had become entitled to a superannuation allowance on ceasing to be employed in local government service, have been liable to contribute to that allowance, that body or the appropriate authority in relation to that body (as defined in paragraph (15) of Regulation 52 of the National Health Service (Scotland) (Superannuation) Regulations, 1950(**c**)), shall make a payment to the authority maintaining the fund to which he was a contributor as aforesaid of an amount equal to the transfer value which that body or the appropriate authority would have been liable to pay to the Secretary of State under paragraph (4) of the said Regulation 52, if those Regulations had become applicable to the officer on the date when he entered employment as a fireman ; and where that body would in such circumstances as aforesaid have had, in respect of any such contribution to a superannuation allowance as aforesaid, a right of contribution from any other body, that other body or the appropriate authority in relation to that other body (so defined as aforesaid) shall make a payment to the authority by whom he is employed as a fireman of an amount equal to the transfer value which that other body or the appropriate authority would have been liable to pay to the Secretary of State under paragraph (5) of the said Regulation, if those Regulations had become applicable to the officer on the date when he entered employment as a fireman.

3.—(1) Where a person enters or had entered employment as a fireman after having ceased to be subject to the Act of 1937 and these rules have become applicable in relation to him, the authority or body by whom he was employed may, within three months after the date on which they are informed by the authority by whom he is employed as a fireman of his notification that he desires these rules to apply to him, resolve that the whole or any part of his non-contributing service (if any) shall be reckonable as contributing service.

(**a**) S.R. & O. 1939/559; Rev. XVII, p. 911; 1939 II, p. 2614. (**b**) 9 Edw. 7. c. 48.
(**c**) S.I. 1950/498; 1950 I, p. 1458.

(2) Where a person enters or has entered employment as a fireman after having ceased to be subject to the Act of 1937 or a local Act scheme and these rules have become applicable in relation to him, then, if any local Act modifying the Act of 1937 or the local Act scheme conferred a discretion on the authority or body by whom he was employed or the authority administering the scheme to which he was subject, as the case may be, in calculating any benefit to which that person might have become entitled on ceasing to be employed, to add a number of years to the number of years which that person had actually served in the aggregate, that authority or body may, within three months after the date on which they are informed by the authority by whom he is employed as a fireman of his notification that he desires these rules to apply to him, exercise that discretion in relation to him, notwithstanding that he has not become entitled to that benefit.

(3) For the purposes of the last preceding rule, any period of non-contributing service of a person in respect of which a resolution has been passed under paragraph (1) of this rule and any number of years added to a person's service under either paragraph (1) or (2), shall be deemed to be a period of service which that person was entitled to reckon immediately before ceasing to hold his former employment as a period of contributing service for the purposes of the Act of 1937 or as a period of service for the purposes of the local Act scheme, as the case may be.

(4) Where the amount of any transfer value payable under the last preceding rule is increased in consequence of the exercise by an authority or body of any power conferred upon them by paragraph (1) or (2) of this rule, that authority or body shall repay the amount of the said increase to the superannuation fund out of which the transfer value is payable.

4. Notwithstanding anything in the Act of 1937 or any local Act scheme, no payment shall be made thereunder by way of a return of contributions to any person in relation to whom rule 2 of these rules has become applicable.

5. Where a person ceased to be employed as a fireman after the fifteenth day of May, 1948, and before the date of the coming into operation of these rules in order to enter employment by virtue of which he was or was deemed to be a contributory employee or local Act contributor, and he has continued in such employment without a break of more than twelve months at any one time, excluding any period of war service or national service, then, if the authority maintaining the fund to which he is a contributor receive from the authority by whom he was employed as a fireman a transfer value calculated in accordance with a method approved by the Secretary of State, he shall be entitled to reckon a period equal to the period of pensionable service he was entitled to reckon immediately before he ceased to be employed as a fireman increased by one-third

(1) for the purposes of the Act of 1937, as if it had been a period of contributing service, or

(2) for the purposes of a local Act scheme, as if it had been a period of service or contribution within the meaning of that scheme,

and his aggregate contributions, within the meaning of the Firemen's Pension Scheme, in respect of the said period of pensionable service shall be deemed to have been contributions in respect of contributing service for the purposes of the Act of 1937, or, as the case may be, in respect of service for the purposes of the local Act scheme, made upon entering such employment as aforesaid to the superannuation fund to which he is a contributor:

Provided that—

(*a*) this rule shall not apply to any person who on ceasing to be employed as a fireman was granted an award other than a gratuity or award by way of return of contributions under the Firemen's Pension Scheme ;

(*b*) this rule shall not apply to any person unless, within three months after the date of the coming into operation of these rules or, if he is not then at that date in such employment as aforesaid, within three months after the date on which he next enters such employment—

(i) he notifies the authority maintaining the superannuation fund to which he is a contributor that he desires these rules to apply to him ;

(ii) he pays to that authority an amount equal to the amount of any gratuity or award by way of return of contributions made to him on ceasing to be employed as a fireman ; and

(iii) he agrees to pay a sum equal to the amount of the balance of any sum he has undertaken to pay by regular instalments in accordance with the provisions of the Firemen's Pension Scheme which was outstanding immediately before he ceased to be employed as a fireman, as though the said sum were payable in accordance with the regulations for the time being in force under proviso (ii) to subsection (2) of section 8 of the Act of 1937, or, where he is subject to a local Act scheme, in accordance with the provisions thereof.

Dated this 12th day of March, nineteen hundred and fifty-three.

James Stuart,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These rules provide that when a pensionable employee of a local authority becomes a pensionable fireman under the Firemen's Pension Scheme the local authority shall pay a transfer value out of the appropriate superannuation fund to the fire authority. The rules are made retrospective to a limited extent under the express powers of section 2 (5) of the Act of 1948.

The rules also provide for the reckoning of the service of persons who transferred from the fire service to employment in which they became subject to the Local Government Superannuation (Scotland) Act, 1937, or a local Act scheme, before the date of the coming into operation of the rules. If the conditions mentioned in the rules are complied with, such persons will be entitled to reckon for the purposes of the Act of 1937 or the local Act scheme the service which they had been entitled to reckon under the Firemen's Pension Scheme.