

# **14/2004: The Firemen's Pension Scheme Order 1992**

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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## **Contents**

Fire Service Circular 14/2004

Update on the New Pension Arrangements - Annex A

Amendments to the Firemen's Pension Scheme - Latest Draft - Annex B

Employment of Regular Time Firefighters as Retained Firefighters - Pension Implications - Annex C

## **Fire Service Circular 14/2004**

Dear Sir/Madam

### **THE FIREMEN'S PENSION SCHEME ORDER 1992 (FPS)**

This circular advises Fire Authorities of the following matters and provides guidance where changes are to be implemented:

1. Update on the New Pension Arrangements
2. Amendments to the Firemen's Pension Scheme - Latest Draft
3. Employment of Regular Firefighters as Retained Firefighters - Pension Implications
4. Enquiries on Firefighter Pension matters

*It should be brought to the attention of your fire authority, pension managers, brigade medical officers/occupational health managers and Human Resources; and in relation to sections A and B to all members of the FPS.*

### **UPDATE ON THE NEW PENSION ARRANGEMENTS**

Provides answers to questions that are regularly being addressed to us about the new pension arrangements. This replaces FSC 12/2003. (Please see Annex A)

### **AMENDMENTS TO THE FIREMEN'S PENSION SCHEME ORDER 1992 - LATEST DRAFT**

The draft order amending the Firemen's Pension Scheme Order 1992 has been reviewed following consultation (see FSC 9/2003). A copy of the final draft and an explanatory note is attached. (Please see Annex B)

It is hoped that the amendment order will be made in June and should come into operation on 1 October. Fire Authorities will want to note the obligation to have arrangements in place for the appointment of qualified independent medical advisers by 1 October 2004. Guidance was issued in FSC 3/2003 in this respect.

### **EMPLOYMENT OF REGULAR FIREFIGHTERS AS RETAINED FIREFIGHTERS - PENSION IMPLICATIONS**

This paper highlights the implications for pensions and other benefits when regular whole-time firefighters have additional retained contracts of employment. (Please see Annex C)

### **ENQUIRIES ON FIREFIGHTER PENSION MATTERS**

Enquiries on pension matters should be addressed to the following staff at the above address in Portland House.

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Any enquiries about this circular should be made to Anthony Mooney at the address above.

Yours faithfully

**Martin Hill**

## **Update on the New Pension Arrangements - Annex A**

Since ODPM's first briefing note on pensions issued under cover of Fire Service Circular 12/2003 (2 September 2003), a number of rumours have been circulating about changes to the FPS, which is the existing pension scheme for regular firefighters, and what new pension arrangements might look like for the future.

In the White Paper "Our Fire and Rescue Service", the Government committed itself to introducing new pension arrangements for firefighters more suited to the fire service of the future and to introducing pension arrangements for Retained firefighters currently excluded from the pension provisions of the FPS.

The new arrangements will also reflect changes in the relevant tax and regulatory framework for pensions generally. These result from decisions taken by the Department of Work and Pensions and the Inland Revenue. All pension schemes, including the FPS, will need to take account of these.

Questions:

### **When will details of the new scheme be available?**

*Options are still being considered for the new scheme. No consultation paper on the new scheme has been published by ODPM. It is expected that the consultation paper for the firefighters new pension arrangements will not be available before June 2004. After which people will have at least 3 months within which to comment.*

### **Will the proposed new scheme replace the existing scheme or will it be for new recruits only?**

*No decisions have been made about the new pension arrangements as yet. It is possible that the existing scheme will continue in parallel to any new scheme but closed to new entrants. If this is the case members of the existing scheme may be able to decide whether to transfer to the new scheme to take advantage of the benefits. If the new scheme replaces the existing scheme then the benefits of members of the existing scheme would be fully protected.*

### **What changes to the pension arrangements are likely to be included in the new scheme?**

*Options have not yet been finalised, but issues such as pensions for unmarried partners and the retention of widows or widowers pensions on remarriage are being considered for the new pension scheme. The Civil Partnership Bill (which concerns registration of same sex couples) is likely to impact on the existing scheme as well.*

### **What is happening about a pension scheme for Retained firefighters?**

*At present Retained firefighters do not have access to all of the provisions of the existing scheme. The exceptions being access to ill-health and injury benefits if the Retained firefighter is injured in the performance of fire fighting duties. The Government is committed to*

*introducing an appropriate pension scheme for the Retained, recognising the variety of personal circumstances involved, and proposals will be included in the consultation document issued in respect of the new pension arrangements.*

### **What changes are the Department of Work and Pensions (DWP) and the Inland Revenue proposing?**

*The Inland Revenue proposals will have a direct impact on all pension schemes and they are as follows:*

- *Scheme members will be able to accumulate a lifetime allowance for tax-privileged pension savings of £1.5m from April 2006 and rising to £1.8m in 2010;*
- *To value the lifetime allowance a single valuation factor for defined benefit schemes (such as the FPS) will be used of £20 for every £1 of pension;*
- *A recovery charge of 25% on funds in excess of the lifetime allowance will be made;*
- *The option to commute up to 25% of the value of the pension benefits will be permitted;*
- *The minimum age for taking benefits will rise from age 50 to 55 by 2010;*
- *The age for taking deferred pensions will rise from age 60 to 65;*
- *Pension scheme members will be able to draw pension and continue to be employed; and*
- *People will be able to join any type and any number of pension schemes at any time.*

*DWP published the Pensions Bill on 12th February 2004. The FPS is not a funded scheme and so will not be directly affected by all the proposals. However, the Bill provides a better deal for people who choose to draw their state pension late - including a new option to take a lump sum. All pension scheme members will want to be aware of this.*

### **How will the changes set out above affect the existing firefighters' pension scheme?**

*The changes will need to be taken into account by all pension schemes. For example, under the tax changes to pensions firefighters recruited from April 2006 will not be able to receive a pension before they reach the age of 55 (at present 50 years) and deferred pensions will be paid from age 65 (at present 60 years). Originally this was going to be from April 2005, but the Chancellor announced the new date in his budget speech. It is not yet clear how all the changes may or may not affect existing firefighters. However, it is unlikely that the changes will impact on those who are in the later stages of their service, and therefore should not affect their retirement plans.*

### **What other plans are there for amending the existing scheme?**

*Changes are needed to meet existing legal requirements and to avoid claims of discrimination. The Pensions Sub Committee (of the Central Fire Brigades Advisory Council) had been discussing the need for amendment to the current scheme prior to the modernisation programme. These changes should ensure that the current Pension Scheme is flexible enough to deal with the changes to the service overall prior to the introduction of a new pension scheme.*

*These changes include:*

- *A change in the definition of firefighter allowing people to remain in the pension scheme if they undertake roles other than fire fighting. At present, a firefighter no longer engaged in full operational duties is unable to remain in the scheme.*
- *An obligation on fire and rescue authorities to use independent medical assessment before approving applications for early retirement on ill health grounds.*
- *Tidying up provisions to take account of maternity, adoption and paternity leave and benefits paid to dependants.*
- *The extension of the FPS to recognise part-time service by regular firefighters.*
- *Clarification of the term pensionable pay.*
- *A revision of the responsibilities of Medical Appeal Boards and how costs might be apportioned in the future when boards are cancelled or postponed at short notice.*

*As explained in answer to Question 2, we may need to make further changes to the current scheme as regulatory changes to pensions in general take effect.*

*The amendments are likely to be in place by October 2004. A Fire Service Circular will be issued to advise members of the Fire and Rescue Service when these take effect.*



## **Amendments to the Firemen's Pension Scheme - Latest Draft - Annex B**

The draft amendment order 2004 has been completed to take account of comments received following the consultation exercise and will be put up to Ministers for signature. It is expected that the order will be made in June 2004 and come into effect 3 months later on either 1<sup>st</sup> September or October 2004.

A brief explanation of the amendments is included below.

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### **Rule A 7 (Paragraph 1)**

This provides for part-time service to count towards pensionable service.

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### **Rule A8 (Paragraph 2)**

This allows for unpaid leave relating to additional maternity leave and additional adoption leave to count as pensionable service where the firefighter has opted to pay pension contributions under Rule G2A of the Scheme.

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### **Rule A 9 (Paragraph 3)**

With the change in the definition of a regular firefighter to include part-timers it is now inappropriate for Rule A9(2) to apply to part-timers. This Rule has been amended to apply to retained and volunteer firefighters.

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### **Rule A10 (Paragraph 4)**

This amends the definition of permanently disabled so that a disablement will be deemed to be permanent if it lasts until the date of compulsory retirement in accordance with Rule A13.

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### **Rules A13 and A14 (Paragraph 5 and 6)**

This removes references to "whole-time" firefighters and replaces it with "regular" firefighters. This will include part-time firefighters according to Rule A9.

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**Rule B5 (Paragraph 7)**

Firefighters who have opted not to pay pension contributions during additional unpaid maternity leave and/or additional unpaid adoption leave will not have this period counted as pensionable service for the purpose of determining entitlement to a deferred pension.

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**Rule B7 (Paragraph 8)**

Specifies "pensionable years" to make clear that, in the case of a person who has part-time service, a quarter of the full amount of pension means a quarter of the full amount of that pension after it has been reduced to reflect part-time service.

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**Rule B9 (Paragraph 9)**

This specifies that a firefighter on retirement, must have a normal life expectancy before he will be eligible to allocate part of his pension to a beneficiary.

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**Rule B13 (Paragraph 10)**

This allows for the calculation of awards for part-time firefighters and part-time service.

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**Rule C1 (Paragraph 11)**

This enables a Spouse's ordinary pension and/or widow's requisite benefit and temporary pension) to be paid when a firefighter has at least 2 years pensionable service. This was previously 3 years.

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**Rule F1 (Paragraph 12)**

This allows for paid maternity, paternity and adoption leave to be included as pensionable service.

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**Rule F2 (Paragraph 13)**

Where unpaid additional maternity and unpaid additional paternity leave has been taken and the firefighter has opted not to pay pension contributions during this period, this service will not count as pensionable service.

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**Rule F2A (Paragraph 14)**

Allows for ordinary maternity leave, paid additional maternity leave, paternity leave, ordinary adoption, paid additional adoption leave to count as pensionable service. This also allows for unpaid additional maternity and adoption leave to count as pensionable service where the firefighter opts to pay the pension contributions during these periods.

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**Rule G1 (Paragraph 15)**

This allows pensionable pay to be defined as whole-time and part-time pay.

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**Rule G2A (Paragraph 16)**

This allows for periods of additional unpaid maternity and adoption leave to count as pensionable service where the firefighter has opted to pay pension contributions under Rule G2A.

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**Rule G7 (Paragraph 17)**

This sets a deadline for receipt by Authorities of pension contributions paid by way of a lump sum.

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**Rule H1 (Paragraph 18)**

This makes the appointment of an Independent Qualified Medical Practitioner (IQMP) by an Authority to consider entitlement to awards and obtaining a written opinion from the IQMP a mandatory requirement. It also makes the opinion of the IQMP binding on the Authority.

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**Rule H2 (Paragraph 19)**

This extends the responsibility of a board of medical referees to any issues covered by Questions (a) to (f) of Rule H1(2) and does not limit to medical issues only.

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**Rule I3 (Paragraph 20)**

This allows for an award to be made to a qualifying child on the death of a serviceman where

he died during his service or from an injury sustained during that service.

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**Rule J3 (Paragraph 21)**

This amends Rule J3 to extend the references to whole-time regulars to include part-time regulars.

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**Rule J4 (Paragraph 22)**

This amends the reference to Part-time members of a brigade to distinguish between Part-time regular, retained and volunteer.

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**Rule K1 (Paragraph 23)**

This enables a review of all cases where a firefighter has received early payment of a deferred pension due to disablement.

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**Rule K4 (Paragraph 24)**

This excludes pensions awarded under Part C, Awards on death from withdrawal by the Authority.

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**Rule L4 (Paragraph 25)**

This enables children whose parents were both firefighters to receive appropriate benefits relating to the service of each parent.

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**Schedule 1 (Paragraph 26)**

Adds additional definitions to the Glossary of Expressions relating to Regular firefighter, Independent Qualified Medical Practitioner, Adoption leave, Maternity leave, Paternity leave, Retained member of a brigade and Volunteer member of a brigade.

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**Schedule 2 (Paragraph 27, 28 and 29)**

These add reference to new Part IIIA (calculation of awards for part-time service) to the

reference in Parts I, II, III, V and VI.

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**Schedule 3 and 4 (Paragraph 30, 31,32 and 33)**

This enables Spouse's ordinary pension and Child's ordinary allowance to be calculated with regard to part-time service.

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**Schedule 9 (Paragraph 34)**

Amended to differentiate between interview and medical examination by the medical referees and specifies the sum to be paid by the appellant where an appeal is withdrawn within ten days of the appointed date

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**Schedule 9 (Paragraph 35)**

Allows for a party, before an appeal tribunal, to be represented by an authorised advocate.

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## **Employment of Regular Time Firefighters as Retained Firefighters - Pension Implications - Annex C**

### **BACKGROUND**

Fire and Rescue Authorities (FRAs) may employ regular firefighters as retained firefighters. The retained duties may be either with the same FRA or with a second Authority. We are aware that varying contractual arrangements are being made. Although this method of resourcing may have operational advantages, there are pension issues of which FRAs should be aware.

### **RELEVANT FIREFIGHTER PENSION SCHEME PROVISIONS**

Under rule J4 of the Firemen's Pension Scheme Order 1992 (FPS), a retained member of a brigade who retires due to permanent disability occasioned by a qualifying injury is treated as a regular whole-time firefighter for the purposes of rules B3 (ill-health award) and B4 (injury award).

Furthermore, under Rule J4 (7), any award will be calculated as if the retained firefighter held the rank of a regular whole-time firefighter and had the same service in that rank and was entitled to reckon as pensionable service a period equal to the retained service.

Rule L4 of the FPS normally prevents duplication but specifically excludes awards payable under rule J4.

### **Examples**

**A regular firefighter who has a separate contract as a retained firefighter with the same brigade has a qualifying injury derived from his regular employment.**

*- Regular firefighter contract:*

*Ill-health award based on regular firefighter service and pay.*

*Injury award based on regular firefighter service and pay.*

*- Retained firefighter contract:*

*No award.*

**A regular firefighter who has a separate contract as a retained firefighter with the same brigade has a qualifying injury derived from his retained employment.**

*- Regular firefighter contract:*

*Ill-health award based on regular firefighter service and pay.*

*No injury award.*

*- Retained firefighter contract:*

*Ill-health award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.*

*Injury award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.*

**A regular firefighter who has a separate contract as a retained firefighter with a different brigade has a qualifying injury derived from his regular employment.**

*- Regular firefighter contract:*

*Ill-health award based on regular firefighter service and pay.*

*Injury award based on regular firefighter service and pay.*

*- Retained firefighter contract:*

*No award.*

**A regular firefighter who has a separate contract as a retained firefighter with a different brigade and has a qualifying injury derived from his retained employment.**

*- Regular firefighter contract:*

*Ill-health award based on regular firefighter service and pay.*

*No injury award.*

*- Retained firefighter contract:*

*Ill-health award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.*

*Injury award based on retained firefighter service and pay of a regular firefighter of equivalent rank and service.*

**A regular firefighter who has a single contract that includes certain retained duties and has a qualifying injury.**

*- Regular firefighter contract:*

*Ill-health award based on regular firefighter service and pay.*

*Injury award based on regular firefighter service and pay.*

A firefighter whose retained duties are part of a whole time contract is not a part time member

of a brigade and rule J4 could not apply.

## **PENSION IMPLICATIONS**

Double Payment:

Separate regular and part time retained contracts bring clarity to the working arrangements but would result in double payment where the qualifying injury was derived from retained employment as in examples 2 and 4 above. A situation could also arise where qualifying injuries are derived from both regular and retained employment. Rule L4 would not apply. Similarly, abatement provisions in Schedule 2, Part V (injury awards) para 2 would only apply to any other pensions calculated by reference to the service during which the qualifying injury was received. There could therefore be no abatement of the ill-health award derived from the regular contract.

Single Contract that includes retained duties:

A single contract of this type could prevent double payment but there would need to be clarity with regard to any separation of duties as pension contributions do not apply to retained service pay.

## **FINANCING OF AWARDS**

Rule L1(1) states that an award is payable by the fire authority by whom the regular firefighter was last so employed.

Rule L1(2) deals with the payment of awards to persons employed as a member of a brigade but not as a regular firefighter (i.e. awards under Rules J3 and 4).

Example 2 shows that there can be double payment when a person has separate contracts as a regular and a retained firefighter with one FRA; and Example 4 where there are contracts with different FRAs.

The double payment arising from Example 4 involves two authorities. If a firefighter is employed as a regular firefighter with Brigade A and as a retained firefighter with Brigade B and becomes permanently disabled as a result of a qualifying injury derived from the retained duties raises the question of who should pay the award. Rule L1(2) would apply. The implication is that Brigade B should finance both awards (ill-health and injury).

## **CONCLUSION**

The FPS does not envisage regular firefighters being employed also as retained firefighters.

Fire Authorities should be aware of the pension and compensation implications of employing regular firefighters as retained firefighters.

Fire Authorities should exercise caution when issuing single contracts that include retained duties.



FRA's should agree prior to employment as retained firefighters of persons who are regular firefighters in another brigade how any subsequent ill-health and injury awards will be financed.

