

## Forfeiture factsheet

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### Introduction

The Firefighters' Pension Scheme(s) allow for a scheme manager to withdraw a member's pension in whole or part, permanently or temporarily in certain circumstances.

This factsheet sets out the circumstances where a scheme manager can withdraw a member pension and provides a process to follow should you need to implement this.

## Legislation

### FPS 1992

[Regulation K2](#) of the Firefighters' Pension Scheme Regulations 1992 (FPS 1992) allow for a scheme manager to withdraw a pension on conviction of certain offences.

#### K5 Withdrawal of pension on conviction of certain offences

- (1) Subject to paragraph (4), in the circumstances specified in paragraph (2) the fire and rescue authority by whom a pension is payable may withdraw the pension in whole or in part, and permanently or temporarily as they may specify.
- (2) The circumstances are—
  - (a) that the person entitled to the pension ( "the pensioner" ) has been convicted of an offence falling within paragraph (3), and in the case of a pension under **Part C** that the offence was committed after the death on which the pensioner became entitled to it, or
  - (b) that the pensioner has been convicted of an offence committed in connection with his service as an employee of a fire and rescue authority which is certified by the Secretary of State either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.
- (3) The offences mentioned in paragraph (2)(a) are—
  - (a) an offence of treason, and
  - (b) one or more offences under the Official Secrets Acts 1911 to 1989 , or under section 18 of, or listed in section 33(3) (a) of, the National Security Act 2023, for which the pensioner has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.
- (4) In determining whether the withdrawal of a pension should—
  - (a) be permanent or temporary, and
  - (b) affect the pension in whole or in part,the fire and rescue authority may make different determinations in respect of the secured and unsecured portions of the pension; but the secured portion may not be withdrawn permanently and may only be withdrawn temporarily for a period ending before the pensioner attains state pensionable age or one during which he is imprisoned or otherwise detained in legal custody.
- (5) The fire and rescue authority may, to such extent as they at any time in their discretion think fit—
  - (a) apply for the benefit of any dependant of the pensioner's, or
  - (b) restore to the pensioner,so much of any pension as has been withdrawn under this rule.

### FPS 2006

[Paragraph 5 of Part 9](#) of the Firefighters' Pension Scheme regulations 2006 (FPS 2006) and [Paragraph 4 of Part 9 of Schedule 1](#) of the Firefighters' Compensation Scheme 2006 (FCS 2006) allow for scheme manager to withdraw a pension on conviction of certain offences.

#### 5 Withdrawal of pension on conviction of certain offences

- (1) Where paragraph (2) applies, the authority by which a pension under **Part 3 or 4** is payable may withdraw the pension in whole or in part and permanently or temporarily as they think fit.
- (2) This paragraph applies where—
  - (a) the pensioner has been convicted of an offence referred to in paragraph (3), and, in the case of a pension under **Part 4**, that the offence was committed after the death on which the pensioner became entitled to it, or
  - (b) that the pensioner has been convicted of an offence, committed in connection with his employment by an authority, which is certified by the Secretary of State—
    - (i) as gravely injurious to the interests of the State; or
    - (ii) as likely to lead to serious loss of confidence in the public service.
- (3) The offences mentioned in paragraph (2)(a) are—
  - (a) an offence of treason, and
  - (b) one or more offences under the Official Secrets Acts 1911 to 1989 , or under section 18 of, or listed in section 33(3) (a) of, the National Security Act 2023, for which the pensioner has been sentenced, on the same occasion—
    - (i) to a term of imprisonment of at least 10 years, or
    - (ii) to two or more consecutive terms amounting in aggregate to at least 10 years.
- (4) The authority may, at any time and to such extent as they think fit—
  - (a) apply for the benefit of any dependant of the pensioner, or
  - (b) restore to the pensioner ,so much of any pension as has been withdrawn under this rule.

#### 4 Withdrawal of pension on conviction of certain offences

- (1) In the circumstances specified in paragraph (2) the fire and rescue authority by whom a pension under this Scheme is payable may withdraw the pension in whole or in part and permanently or temporarily as they may specify.
- (2) The circumstances are—
  - (a) that the person entitled to the pension ( "the pensioner" ) has been convicted of an offence falling within paragraph (3), and in the case of a pension under **Part 3**, that the offence was committed after the death on which the pensioner became entitled to it, or
  - (b) that the pensioner has been convicted of an offence committed in connection with his service as an employee of a fire and rescue authority which is certified by the Secretary of State either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.
- (3) The offences mentioned in paragraph (2)(a) are—
  - (a) an offence of treason, and
  - (b) one or more offences under the Official Secrets Acts 1911 to 1989 , or under section 18 of, or listed in section 33(3) (a) of, the National Security Act 2023, for which the pensioner has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.
- (4) The fire and rescue authority may, to such extent as they at any time think fit—
  - (a) apply for the benefit of any dependant of the pensioner, or
  - (b) restore to the pensioner ,so much of any pension as has been withdrawn under this rule.

[Paragraph 6 of Part 9](#) of FPS 2006 and [Paragraph 5 of Part 9 of Schedule 1](#) of the FCS 2006 allows for a scheme manager to forfeit in whole or part the award of a member who has been convicted of an offence under subsection 6(a) of section 34 of the Fire and Rescue Act (acts or omissions for purposes of obtaining awards or other sums).

## 6 Forfeiture of award

A person who has been convicted of an offence under subsection (6) of section 34 of the Fire and Rescue Services Act 2004 (acts or omissions for purposes of obtaining awards or other sums), forfeits the whole or part of an award or sum obtained by him under this Scheme, as the authority think fit.

## 5 Forfeiture of award

A person who has been convicted of an offence under subsection (6) of section 34 of the Fire and Rescue Services Act 2004 (acts or omissions for purposes of obtaining awards or other sums), forfeits the whole or part of an award or sum obtained by him under this scheme, as the fire and rescue authority think fit.

## Fire and Rescue Act

[Subsection 6\(a\)](#) of section 34 of the Fire and Rescue Act allows for the scheme manager to forfeit an award where a person commits an offence if they carry out an act or makes omission as a result of which they are injured or becomes ill, for the purposing of receiving for themselves or another an award under the pension scheme.

- (6) A person commits an offence if he does an act or makes an omission as a result of which he is injured or becomes ill, for the purpose of obtaining, for himself or another person—
- (a) an award under a scheme brought into operation under this section, or

## FPS 2015

[Regulation 171 of Chapter 2, Part 13](#) of the Firefighters' Pension Scheme Regulations 2015 allow for a scheme manager to forfeit a pension for a member, surviving partner or eligible children when they have been convicted of certain offences.

### 171 Forfeiture: offences committed by members, surviving partners or eligible children

- (1) If a member, surviving partner or eligible child is convicted of a relevant offence, the scheme manager may, to such extent and for such duration as it considers appropriate, withhold pensions payable under this scheme to—
- (a) the member;
- (b) any person in respect of the member ;
- (c) a surviving partner; or
- (d) an eligible child.
- (2) Where a surviving partner's or an eligible child's pension under Part 6 (death benefits) is to be withheld under paragraph (1) as a result of a relevant offence falling under paragraph (a) or (b) of the definition of that expression in paragraph (5), the offence must have been committed after the death on which the person became entitled to the surviving partner or eligible child's pension, as the case may be.
- (3) The scheme manager may only withhold that part of a person's pension that exceeds any guaranteed minimum to which the person is entitled under—
- (a) section 14 of PSA 1993 (earner's guaranteed minimum); or
- (b) section 17 (minimum pensions for widows and widowers) of that Act.
- (4) The scheme manager may, at any time and to such extent and for such duration as it thinks fit—
- (a) apply for the benefit of any dependant of the member; or
- (b) restore to the member,
- so much of any pension as has been withheld under this regulation.
- (5) In this regulation—
- “forfeiture certificate” means a certificate stating that the Secretary of State issuing the certificate considers that the offence—
- (a) has been gravely injurious to the interests of the State, or
- (b) is liable to lead to serious loss of confidence in the public service;
- “relevant offence” means—
- (a) offences of treason,
- (b) offences under the Official Secrets Acts 1911 to 1989 , or under section 18 of, or listed in section 33(3)(a) of, the National Security Act 2023, for which the member has been sentenced on the same occasion—
- (i) to a term of imprisonment of at least 10 years,
- (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years, or
- (c) offences—
- (i) committed in connection with the member's scheme employment; and
- (ii) in respect of which the Secretary of State has issued a forfeiture certificate.

[Regulation 172 of Chapter 2, Part 13](#) of FPS 2015 allows for a scheme manager to forfeit a pension of a surviving partner or eligible children if they have been convicted of the murder of the member.

#### 172 Forfeiture of pensions: offences committed by other persons

- (1) If a person ( "P" ) is convicted of the murder of a member , the scheme manager must withhold all of any surviving partner or eligible child's pension otherwise payable to P in respect of the member under Part 6 (death benefits).
- (2) If P is convicted of a relevant offence, the scheme manager may, to such extent as it considers appropriate, withhold any surviving partner or eligible child's pension payable to P in respect of a member under Part 6 (death benefits).
- (3) If paragraph (1) applies, Part 6 (death benefits) applies as if P had died before the member.
- (4) Under paragraph (2), the scheme manager may only withhold such part of P's pension as exceeds any guaranteed minimum to which P is entitled under section 17 of PSA 1993.
- (5) If P is convicted of the murder of a member and the conviction is subsequently quashed on appeal, any surviving partner or eligible child's pension withheld is to be payable from the day after that on which the member died, and the scheme manager must, as soon as reasonably practicable after the conviction is quashed, pay the arrears of the pension accrued.
- (6) If P is convicted of a relevant offence and the conviction is subsequently quashed on appeal any decision under paragraph (2) is to be treated as revoked and the scheme manager must, as soon as reasonably practicable after the conviction is quashed, pay the arrears of the pension accrued from the day after that on which the member died.
- (7) Nothing in paragraphs (5) or (6) is to affect the application of paragraphs (1) or (2) if the person whose conviction is quashed is subsequently convicted of the murder of the member or of a relevant offence.
- (8) In this regulation, relevant offence means—
  - (a) the manslaughter of the member ; or
  - (b) any other offence, apart from murder, of which the unlawful killing of the member is an element.

[Regulation 173 of Chapter 2, Part 13](#) of FPS 2015 allows for a scheme manager to withhold any lump sum death benefit to that person if they have been convicted of the murder, manslaughter, or any other conviction of unlawful killing of the member.

#### 173 Forfeiture of lump sum death benefit: offences committed by other persons

- (1) If a person is convicted of a relevant offence, the scheme manager must withhold all of any lump sum death benefit payable to that person in respect of a member under Chapter 4 of Part 6 (death benefits).
- (2) In this regulation, relevant offence means—
  - (a) the murder of the member;
  - (b) the manslaughter of the member ; or
  - (c) any other offence of which the unlawful killing of the member is an element.
- (3) If paragraph (1) applies and the scheme manager withholds all benefits, Part 6 (death benefits) applies as if that person had died before the member.
- (4) If a person is convicted of a relevant offence and the conviction is subsequently quashed on appeal the scheme manager may, to such extent and for such duration as it thinks fit, restore to that person so much of any benefit as has been withheld under this regulation.
- (5) Nothing in paragraph (4) is to affect the application of paragraph (1) if the person whose conviction is quashed is

[Regulations 174 of Chapter 2, Part 13](#) of FPS 2015 allows for a scheme manager to withhold benefits from a member a value or for a duration that they feel is appropriate, where the member has a relevant monetary obligation or has cause a relevant monetary loss to the scheme manager.

#### 174 Forfeiture: relevant monetary obligations and relevant monetary losses

- (1) If a member (P) has a relevant monetary obligation or has caused a relevant monetary loss the scheme manager may, to such extent and for such duration as it considers appropriate, withhold benefits payable to P under this scheme.
- (2) The scheme manager may withhold benefits to the extent the scheme manager considers appropriate but may only withhold that part of P's pension as exceeds any guaranteed minimum to which P is entitled under section 14 of PSA 1993.
- (3) The scheme manager may not withhold more than the lesser of—
  - (a) the amount of the relevant monetary obligation or relevant monetary loss; and
  - (b) the value of P's entitlement to benefits.
- (4) The scheme manager may only withhold benefits if—
  - (a) there is no dispute as to the amount of the relevant monetary obligation or relevant monetary loss; or
  - (b) the relevant monetary obligation or relevant monetary loss is enforceable as follows—
    - (i) under an order of a competent court, or
    - (ii) in consequence of an award of an arbitrator.
- (5) In this regulation—

**"relevant monetary obligation"** means a monetary obligation which—

  - (a) was incurred to P's employer,
  - (b) was incurred after P became an active member of this scheme,
  - (c) arose out of P's criminal, negligent or fraudulent act or omission, and
  - (d) arose out of or was connected with the scheme employment in respect of which P is a member of this scheme;

and

**"relevant monetary loss"** means a monetary loss which—

  - (a) was caused to this scheme, and
  - (b) arose as a result of P's criminal, negligent or fraudulent act or omission.

[Regulation 175 and 176 of Chapter 2, Part 13](#) of FPS 2015 sets out the process that a scheme manager should follow to apply forfeiture of a member, surviving partner or eligible children's pension.

## 175 Set-off

- (1) The **scheme manager** may set off a **relevant monetary obligation** against a **member's** entitlement to benefits under **this scheme**.
- (2) In this regulation, a **"relevant monetary obligation"** is a monetary obligation owed by a **member (P)**, which satisfies the conditions in paragraphs (3), (4) or (5).
- (3) The conditions in this paragraph are that the monetary obligation—
  - (a) was incurred to P's employer;
  - (b) was incurred after P became an **active member of this scheme**;
  - (c) arose out of or was connected with service in the **scheme employment** in respect of which P is a **member of this scheme**; and
  - (d) arose out of P's criminal, negligent or fraudulent act or omission.
- (4) The conditions in this paragraph are that the monetary obligation—
  - (a) was incurred to **this scheme**; and
  - (b) arose out of P's criminal, negligent or fraudulent act or omission.
- (5) The conditions in this paragraph are that the monetary obligation—
  - (a) was incurred to **this scheme**; and
  - (b) arose out of a payment made to P in error by the **scheme manager**.
- (6) Paragraph (7) applies if a set-off is to be applied as result of P owing a **relevant monetary obligation** which satisfies the conditions in paragraph (3).
- (7) Where this paragraph applies, the **scheme manager** may not apply a set-off against that part of P's entitlement to benefits that represents transfer credits within the meaning of **section 124(1)** (interpretation of Part 1) of **the Pensions Act 1995** other than prescribed transfer credits for the purposes of **section 91(5)(d)** (exceptions from the inalienability of occupational pensions) of **the Pensions Act 1995**.
- (8) The **scheme manager** may only apply a set-off against that part of a **member's** pension that exceeds any **guaranteed minimum** to which that **member** is entitled under **section 14 of PSA 1993**.
- (9) The value of the set-off applied must not exceed the lesser of—
  - (a) the amount of the **relevant monetary obligation**; and
  - (b) the value of P's entitlement to benefits.
- (10) The **scheme manager** may only set off a **relevant monetary obligation** against P's entitlement to benefits if—
  - (a) there is no dispute as to the amount of the **relevant monetary obligation**; or
  - (b) the **relevant monetary obligation** is enforceable—
    - (i) under an order of a competent court, or
    - (ii) in consequence of an **award** of an arbitrator.

## 176 Forfeiture and set-off: procedure

- (1) If the **scheme manager** proposes to withhold benefits or apply a set-off against a person's entitlement to benefits, the **scheme manager** must notify the person of the proposal in writing.
- (2) If the **scheme manager** withholds benefits under **regulation 174** (forfeiture: relevant monetary obligations and relevant monetary losses) or applies a set-off against an entitlement to benefits under regulation 175 (set-off), the **scheme manager** must give the **member** a certificate showing—
  - (a) the amount withheld or set off; and
  - (b) the effect of the withholding or set-off on the **member, surviving partner or eligible child's** benefits under **this scheme**.

## Process

The process for applying forfeiture is set out within FPS 2015 regulations and whilst this is not specifically set out within the other regulations, there is no reason to suggest that this shouldn't be applied as good practice in all cases.

Scheme managers are recommended that they follow this process and should access each case individually and document each stage of their decision process to ensure that they have a robust audit trail.

### Stage one – Identification of a case

A case may be identified through different channels. The list below illustrates some examples; however, this is not an exhaustive list:

- Internally from HR or the FRA:
  - If there is an employment related issue i.e. an action that is greatly injurious to the secretary of state, or that has or could lead to a serious loss of confidence in the FRA or connected Local Authority.
  - If the employee has purposely injured themselves, or have become ill for the purpose of gaining an award under the pension or compensation scheme for themselves or another person i.e. beneficiary
- From a Police Authority:
  - Where a member has been convicted of an offence, where they are aware that the member was employed by an FRA and it could be of significance, or where the FRA has notified the Police of a specific offence and the member has been convicted.
  - Where a member has been killed by their surviving partner or eligible child, and they have been convicted of an offence.
- Member of the public
  - Where a conviction or action has received media attention and the member of the public is aware that they are linked to an FRA.
- Family member or friend:
  - If they are acting on behalf of the member or a surviving partner or eligible child and are aware of any circumstances which affects either the members, surviving partner or eligible child's pension.

### Stage two – Consider the circumstances, make a decision and notify member

It is recommended that within two months of identifying a case which is being considered for forfeiture, the scheme manager should review the case and establish whether the conditions in the regulations are met, they should then consider the following, however this is not an exhaustive list:

- impact of the circumstances
- any financial and/or reputation risk or loss
- whether there has been any media coverage.

The scheme manager should then decide whether a forfeiture certificate should be obtained from the secretary of state.

A template [forfeiture certificate report](#) is available for the scheme manager to complete.

The scheme manager should then write to the member to notify them of the intention to forfeit/withdrawn all or part, permanently or temporarily their pension, and on what grounds.

### **Stage three – Obtain approval from Secretary of State**

Once the scheme manager has written to the member and completed the forfeiture certificate report this should be sent to the LGA Bluelight inbox [bluelightpensions@local.gov.uk](mailto:bluelightpensions@local.gov.uk), with any relevant evidence for them to take forward with the Home Office.

Please note the scheme manager will need to request certain estimates from their administrators to allow them to complete the forfeiture certificate.

### **Stage four – Outcome**

The Secretary of State may take several months to consider the outcome of the forfeiture certificate. Once an outcome has been received this will be provided to the FRA.

### **Stage five – Inform the member of the outcome**

Once the outcome has been received from the Secretary of State the scheme manager must inform the member of the outcome, and the impact on their pension.

### **Stage six – Notify the administrator**

It is important that the administrator is notified of the outcome of the forfeiture, so that they can either amend the amount payable, or stop payment of the pension.

### **Stage seven – Administrator to inform the member of the action**

Once the administrator has actioned the forfeiture the administrator should write to the member to confirm that this has been completed and arrange any recovery of the pension accordingly.

## **Appeal**

A member who is dissatisfied with a decision may raise an appeal against that decision through the existing Internal Dispute Resolution Procedure (IDRP) process.

It is recommended that scheme managers should consider whether their current IDRP processes are sufficient. Consideration should be given to the fact that, under the IDRP, the scheme manager may be asked to reconsider a decision which they previously made under this process. FRAs are encouraged to consider whether this seems fair and reasonable, if it is deemed not to be then FRAs should consider who is the most appropriate person to hear each stage of the IDRP.

A member should be made aware of their right of appeal. If the member appeals before the outcome from the Secretary of State, the members grounds of appeal should be notified to the Secretary of State, and the outcome of the appeal.

An appeal under IDRP should be received by the scheme manager within six months of the applicant having received the decision which is to be disputed.

An appeal under IDRP will be considered by an appropriate person other than the person who made the decision about the compensation claim. The appropriate person will not be bound by any previous determination made in connection with the application.

The appropriate person should notify the applicant in writing of the determination of the appeal under IDRP within two months, providing an explanation of their decision.

If an applicant is dissatisfied with a decision on an appeal under IDRP they may make a complaint to the Pensions Ombudsman, and this right to complain should be explained to the member in the decision letter with the relevant contact details.

This factsheet has been prepared by LGA to give some guidance on the rules of the pension scheme using the regulations as they stand in October 2024; however, they should be used only as an informal view of the interpretation of the firefighters' pension scheme as only a court can provide a definitive interpretation of legislation. This factsheet should not be interpreted as legal advice.

Please address any queries on the content of this factsheet to [bluelight.pensions@local.gov.uk](mailto:bluelight.pensions@local.gov.uk)

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