



Information

Secondary Contracts – Injury and death benefits

Purpose

This factsheet has been prepared to provide a background to secondary contracts and eligibility under the Firefighters' Compensation Scheme (England) 2006.

The factsheet provides a summary of the regulations that need to be considered to determine the pensionable consequences of the secondary contracts.

Background

[The Firefighters' Compensation Scheme \(England\) Order 2006](#) came into effect from 1 April 2006 but [rule 3 of Part 2 of the Compensation Scheme](#) (compensation for death of permanent incapacity while on duty) has effect from 1 April 2000.

The Compensation Scheme applies pension provision for payment of an award on death or permanent disablement to regular and retained firefighters and subsequently their spouses or civil partners and dependants.

The position has not changed since the introduction of the compensation scheme in 2006 and was communicated to FRAs when we were considering implications of [COVID-19 resilience cover](#).

A secondary employment/contract, in this context, is an individual employed in a secondary role outside the individual's primary contract of employment with the

Service.

Eligibility to the pension scheme under the secondary contract

Additional duties are only pensionable where they are appropriate to the role as a **firefighter**. If additional duties require a separate contract, the FRA should still be clear that the contract was for work as a **firefighter**. If not, the work may not be considered pensionable under the eligibility rules (Further information on eligibility to the pension is below).

The amount of the injury award

The amount of the injury award would be calculated based on the period of service for the **contract under which the qualifying injury was received**. Therefore, if a secondary contract is used for additional duties and the qualifying injury is received in the performance of these duties, the injury pension would be calculated based on the service for the second contract only. This is because an injury generally only occurs in one employment.

If an individual becomes eligible for an injury award in one post, however, it is probable that they would also become entitled to an ill-health pension from both employments – due to the requirement to be permanently disabled from firefighting in order to qualify for the compensation scheme.

Is the work being undertaken on a temporary basis

FRA's must consider whether the pay is pensionable under the scheme rules if the work is temporary only.

- FPS 2015 [[Regulation 17 \(1a\)](#)] i.e. is the pay an “allowance or emolument paid to that member on a temporary basis” **This regulation is the one most likely to apply for a secondary contract.**

FPSC 6/2007

FPSC [6/2007](#) has some useful commentary on the second contracts of employment, although it should be read with caution as it is dated and no longer endorsed by the

Home Office.

Eligibility to the scheme; are the duties appropriate to the role as a firefighter

FPS 2015

To be eligible for the FPS 2015, regulation 7 confirms a person must be in ‘scheme employment’, regulation 6 confirms that among other conditions, to be in scheme employment a person must be employed as a ‘firefighter’. The interpretations of firefighter under both regular and retained confirms that the terms of engagement must be that the person is or may be required to engage in fire-fighting or may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting).

Regulation 6 – Scheme employment

(1) For the purposes of these Regulations, a person is in scheme employment if that person is employed as a firefighter by an authority and satisfies the requirement in paragraph (2) or paragraph (3).

(2) A person who took up employment on or after 1st April 2015 satisfies the requirement in this paragraph where that person’s role on taking up employment includes—

(a) resolving operational incidents; or

(b) leading and supporting others in the resolution of operational incidents.

(3) A person who is a transition member satisfies the requirement in this paragraph.

(4) The employer of a person in scheme employment is referred to in these Regulations as the “scheme employer”.

Regulation 7 – Eligible persons

(1) For the purpose of this Part, an eligible person is a person who is eligible to be an active member of this scheme.

(2) A person who is in service in a scheme employment (P) is an eligible person in relation to that employment unless in relation to service in that employment—

(a) P is a protected member of the 1992 Scheme or the NFPS; or

(b) P is a member of any other pension scheme and the authority employing P pays contributions to that scheme in respect of P.

(3) P is an eligible person whilst on reserve forces leave.

Regulation 3 – Interpretations

“regular firefighter” means a person (P) employed (whether whole-time or part-time) by an authority—

(a) as a firefighter, but not as a retained or volunteer firefighter,

(b) on terms under which P is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting), and

(c) otherwise than in a temporary capacity;

“retained firefighter” means a person (P) employed by an authority—

(a) as a firefighter, but not as a regular firefighter or a volunteer firefighter,

(b) on terms under which P is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),

(c) otherwise than in a temporary capacity, and

(d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that P receives;

Compensation Scheme

Part 1, rule 3 of the compensation scheme confirms the scheme applies to regular and retained firefighters, the definitions of which are in the interpretations and confirm that this includes where without a break in service the person is required to perform other duties appropriate to his role as a firefighter.

[Part 1, rule 3](#) as amended by [SI 2014/447](#)

Exclusive application to regular and retained firefighters

(1) Subject to paragraph (3) and [Part 8](#) (special cases), **this Scheme applies in relation to [regular](#) and [retained firefighters](#)** and their spouses or civil partners and dependants to the exclusion of [pension provision](#) under any enactment other than section 34 of [the 2004 Act](#) and the Social Security Act 1975.

(2) In paragraph (1) “pension provision” means any provision for the payment of an [award](#), on death or [permanent disablement](#), in respect of employment as a [regular](#) or [retained firefighter](#).

(3) A person who is not an employee of a [fire and rescue authority](#) but whose employment is, under rule 4 or 5 of this Part, treated for the purposes of this Scheme as employment as a [regular firefighter](#), is not a [regular firefighter](#) for the purposes of this rule.

Interpretations

“regular firefighter” means a person who is employed—

(a) by a fire and rescue authority as a firefighter (whether whole-time or part-time), other than as a retained or volunteer firefighter, and

(b) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform **other duties appropriate to his role as a firefighter** (whether instead of, or in addition to,

engaging in fire-fighting) and whose employment is not temporary;

“retained firefighter” means a person who is employed by an authority—

(a) as a retained firefighter, but not as a regular firefighter or a volunteer firefighter,

(b) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform **other duties appropriate to his role as a firefighter** (whether instead of, or in addition to, engaging in fire-fighting),

(c) otherwise than in a temporary capacity, and

(d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that he receives;

This factsheet has been prepared by LGA to give some guidance on the rules of the pension scheme and associated case law using the regulations as they stand at April 2023, however they should be used only as an informal view of the interpretation of the firefighters' Compensation scheme (England) 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