



## Fire Brigades Union

### OFFICIALS BRIEFING - OUT OF TRADE MEMBERS

Head Office Circular 28 November 2007 - Following the issuing of the above circular a large number of enquiries have been received from Out of Trade members who are in receipt of ill - health pensions.

This briefing gives background information and highlights the relevant rules within the Firefighters Pension Scheme which may affect those members.

#### Background

Extract from Head Office circular 2007HOC0584MW

*“Any firefighter who has retired on ill-health within the last 10 years could be reviewed using the 2006 guidance; this has already been raised as a possibility. Under the 2006 guidance it is a strong possibility that many firefighters currently in receipt of an ill-health pension could be dealt with in the same way as the three former London firefighters. This could mean the cessation of pension payments with no offer of alternative employment.”*

The relevant parts of the legislation are reproduced below :

Consolidated Firefighters' Pension Scheme 1992 Order - December 2006

#### PART K

#### REVISION AND WITHDRAWAL OF AWARDS

Review of ill-health and certain deferred pensions

K1.—

(1) So long as a person—

(a) has been in receipt of an ill-health pension for less than 10 years, and

b) is under the age of 60, the fire and rescue authority shall consider, at such intervals as they think proper, whether he has become capable of carrying out any duty appropriate to the role from which he retired on grounds of ill-health.

(2) So long as a person—

- (a) has been in receipt of a higher tier ill-health pension for less than 10 years; and
  - (b) is under the age of 60, the authority shall also consider, at such intervals as they think proper, whether he has become capable of undertaking regular employment.
- (3) So long as a person—
- (a) is in receipt of payments in respect of a deferred pension under rule B5; and
  - (b) is under the age of 60, the authority shall also consider, at such intervals as they think proper, whether he has become capable—
- (i) of carrying out any duty appropriate to the role from which he retired on grounds of ill-health; or
  - (ii) of undertaking regular employment.
- (4) In this Part, “regular employment” means employment for at least 30 hours a week on average over a period of 12 consecutive months beginning with the date on which the issue of his capacity for undertaking employment arises.

#### Consequences of review K1A.—

- (1) If, on such consideration as is mentioned in rule K1(2), it is found that a person has become capable of undertaking regular employment, the authority shall immediately terminate his higher tier ill-health pension.
- (2) A lower tier ill-health pension shall continue to be paid to a person whose higher tier ill-health pension is terminated as mentioned in paragraph (1) unless—
  - (a) on such consideration as is mentioned in rule K1, it is found that he has become capable of performing the duties appropriate to the role from which he retired on grounds of ill-health; and
  - (b) the authority make him an offer of employment in that role (“a paragraph (2)(b) offer”).
- (3) Entitlement to a lower tier ill-health pension shall cease, with immediate effect, where a person accepts or declines a paragraph (2)(b) offer.
- (4) A person who declines a paragraph (2)(b) offer shall then become entitled to a deferred pension under rule B5.

#### Pensions Commentary Explanation

The Pensions Commentary is currently under review but before 1 April 2006, injury pensions were payable under the FPS and guidance was given. From that date the provisions were transferred to the Firefighters' Compensation Scheme. Rule K1 used to cover the review and withdrawal of injury awards. Also it was on 1 April 2006 that two tier ill-health awards were introduced. Rule 3 of the Transitional Provisions of the Firefighters' Pension Scheme (Amendment) (England) Order 2006 allows ill-health awards and deferred awards decided before 1 April 2006 to be reviewed under Rule K1 as it stood before amendment from that date. Consequently the "old terms" have here been written into the explanation of Rule K1.

#### Power to review injury pension

Unlike Rule K1 which allows a fire and rescue authority a discretion to review ill-health pensions, Rule K2 sets a requirement that they must review injury pensions.

The requirement as set out in Rule K2(1) is that the fire and rescue authority must consider whether your degree of disablement has changed at all. If they decide it has, your injury pension would be adjusted accordingly.

“Degree of disablement” is defined in Rule A10 and how it is used in the calculation of an injury award is explained in Rule B4. See the explanation of Rules A10 and B4.

Timing of review Under Rule K2(1) the fire and rescue authority can hold these reviews at such intervals as they think appropriate to your case.

However, if they wish, under Rule K2(3) the fire and rescue authority can resolve that an injury pension should not be subject to review, once 5 years has elapsed since it first became payable.

#### Effect on entitlement to injury award

If, on review, the fire and rescue authority decide that your degree of disability has substantially altered, Rule K2(1) requires that your injury award should be reassessed accordingly.

If, on review, the fire and rescue authority decide that your disability has ceased and you are not also in receipt of an ordinary, ill-health or short-service pension, then under Rule K2(2) your injury pension would be terminated.

#### Points to Note (Archived Guidance)

1. Rule K1 explains the terms which apply for review of an ill-health pension or a deferred pension paid early on health grounds. It is usually the case that a review under Rule K1 will be considered at the same time as a review under Rule K2.

2. When you were medically examined before retirement, the medical practitioner may have been asked to recommend a review after a certain period of retirement or it may be that your fire and rescue authority has a set policy for review. The fire and rescue authority does have the discretion to decide whether or not to follow the recommendation of the medical practitioner (this is not one of the questions contained in Rule H1 and so the recommendation would not be binding) but they should keep you informed of their decision.

3. The fire and rescue authority will conduct the review by deciding your entitlement to an award under Rule H1. If medical issues are involved, they must seek a medical opinion on which to base their decision, as required under Rule H1.

4. If you disagree with the fire and rescue authority’s decision following the review the rights of appeal under Rule H2 “Appeal against opinion on a medical issue” or under Rule H3 “Appeal to Crown Court or Sheriff” apply to you where relevant. The terms and time limits for appeal are similar to those which apply when the award is first made. See the explanation of Rules H2 and H3 for further details.

5. The revision of your pension under Rule K2(1) cannot result in its cancellation unless Rule K2(2) applies (i.e. unless any other pension is terminated), because even though your degree of disablement may be “0%” it would fall into the category “slight” (25% disablement or less).

### Reviews

Any review should be conducted in accordance with Rule H1 of the scheme. Consequently Rule H1(2) requires the fire and rescue authority, before arriving at their determination under Rule H1(1), to obtain the written opinion of an independent qualified medical practitioner selected by them. Having selected an independent qualified medical practitioner and obtained his/her opinion, that opinion is binding on the fire and rescue authority. This means that the fire and rescue authority cannot seek alternative opinions if they are not content with the one provided. This does not mean that the independent qualified medical practitioner decides the award. The power to determine the award rests with the fire and rescue authority under Rule H1 (1). To decide the award they will take non-medical issues not covered by the opinion into account, too.

This potentially means that any review of outstanding awards will potentially follow the same guidance issued by CLG.

### IQMP Guidance

Extracts from 2006 Guidance [Firefighters' pension scheme circulars 2007 - Fire and resilience - Communities and Local Government](#)

“In the case of a former firefighter who is in receipt of an injury award and in respect of whom a determination was made before April 2006, and whose case is the subject of review, the matter would be dealt with under the provisions of the FPS rather than the FCS. In practice this has no significance as the FCS mirrors the provisions which were repealed. In the circumstances this guidance does not refer to such cases separately.

When the IQMP finds that although the firefighter is permanently disabled for operational firefighting duties but is capable of other duties within his/her role, the FRA will need to consider redeployment. Whether or not a job is available for the member is not a matter for the pension scheme and should not be taken into account by the IQMP when reaching his opinion.”

As can be seen potentially retired members may be subject to the same review provisions as existing members and this should be brought to their attention.

If anybody has any specific questions could they direct them through Brigade Officials so that they are aware of any potential problems as they arise.

The issue still remains that we are involved in a campaign to defend pension rights for all members. Out of trade members should contact their local MP's etc as the campaign progresses.