

Circular Number:	FPSC 09/2006	Date Issued:	11/07/2006
Action:	For guidance and information (note in particular action required in paragraphs 2.4 and 3.4).		
Title:	<i>The Firefighters' Pension Scheme (Amendment) Order 2006; The Firefighters' Compensation Scheme Order 2006</i>		
Issued by:	Martin Hill Local Government and Firefighters' Pensions Division		

Summary:	<p>This circular:</p> <ul style="list-style-type: none"> • provides information on the Firefighters' Pension Scheme (Amendment)(England) Order 2006 and the Firefighters' Compensation Scheme Order 2006; and • identifies action that needs to be taken by authorities (paras 2.4 & 3.9). <p>FPSC 06/2006 is cancelled.</p>
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The purpose of this circular is to notify recipients of the making of:

- The Firefighters' Pension Scheme (Amendment)(England) Order 2006 (SI 2006 No. 1810); and
- The Firefighters' Compensation Scheme (England) Order 2006 (SI 2006 No. 1811).

Copies are available at www.opsi.gov.uk/

The changes were announced previously in circular FPSC 6/2006, which is now cancelled.

These Orders apply to England only. Similar orders have been made in Scotland and the Welsh Assembly is expected to make similar orders in due course.

1.0 The Firefighters' Pension Scheme (Amendment) (England) Order 2006

1.1 The amendments that have been made to the FPS fall into five broad categories: (i) those consequential on the new tax regime for pensions; (ii) those required by the new financing arrangements for firefighters' pensions; (iii) those as a result of the new arrangements for ill-health retirements; (iv) those required to close the existing FPS to new members; and (v) correction amendments.

(i) Amendments consequential to the new tax regime:

1.2 As a consequence of the Finance Acts 2004 and 2005, HM Revenue and Customs introduced a new tax regime for pensions which came into force on 6 April 2006. The FPS has been amended in order to meet its requirements.

1.3 These amendments will have effect from 6 April 2006 and are as follows:

- **Rule B2** (*Short service award*) The short service gratuity has been replaced by a "short service lump sum". Payment in these circumstances (where a member retires before normal pension age and with less than 2 years' service) must not exceed the aggregate of a member's pension contributions. Schedule 2, Part IV has been duly amended.
- **Rule B6** (*Repayment of aggregate contributions*) has been amended to make clear that, subject to B6(1)(b), the lump sum payment will only apply where a member has less than two years' service. Where the member has transferred other pension rights into the FPS they will not be eligible for repayment of aggregate contributions but will be entitled to a deferred pension.
- **Rule B7** (*Commutation*) Commutation will only be permitted if the notice to commute is given before the member's pension comes into payment. Rule B7(7) has been amended so that members will have to notify their FRA that they wish to commute a portion of their pension for a lump sum, not earlier than 4 months before their retirement and up to the day before the pension comes into payment. Rule B7 has also been amended so that the

commuted lump sums are paid within 3 months of the date of retirement. The 3 month rule is intended to cater for any administrative delay in paying the lump sum and not to permit commutation after retirement.

- **Rule B8** (*Commutation-small pensions*) A new limit on the amount of pension that may be commuted has been introduced. Rule B8 has been amended to apply the commutation limit set out in Part 1 of Schedule 29 of the Finance Act 2004 (currently 1% of the standard lifetime allowance).
- **Rule B11** (*Deduction of tax from certain awards*) Scheme administrators are required to pass on any tax charges on scheme members by payover to HM Revenue and Customs. Rule B11 has been amended to provide the FRA with the authority to deduct any amount chargeable to tax.
- **Rule C1** (*Spouse's ordinary pension*) has been amended to remove the option for a reduced pension and gratuity instead of an ordinary pension.
- **Rule E1** (*Lump sum death grant*) has been amended to limit payment under this rule to members who die in service before their 75th birthday. FRAs should note that payments under Rule E1 should be made within 2 years of the member's date of death.
- **Rule E5** (*Gratuity in lieu of surviving spouse's pension*) has been amended to describe the payment as a lump sum and to apply the commutation limit in Part 1 of Schedule 29 of the Finance Act 2004. It has also been amended so that the lump sum may only be paid where the member dies before their 75th birthday. FRAs should note that where a surviving spouse/civil partner elects for a lump sum in lieu of a pension their rights to receive any other benefits under the scheme are extinguished. It is therefore important that the lump sum death grant payable under Rule E1 is paid prior to, or at the same time as, any lump sum under Rule E5.
- **Rule E6** (*Gratuity in lieu of child's allowance*) has been amended to describe the payment as a lump sum and to apply the commutation limit in Part 1 of Schedule 29 of the Finance Act 2004. It has also been amended so that the lump sum may only be paid where the member dies before their 75th birthday.
- **Rule E7** (*Limitation on discretion to commute pension or allowance for gratuity*) has been amended to set an overall limit on the amount of the lump sum payments made under rule E5 or E6 of the commutation limit in Part 1 of Schedule 29 of the Finance Act 2004.
- **Rule G7** (*Payment of periodical contributions*) There is no longer a cap of 15% on the tax privileged pension contributions. Rule G7(3) has been amended to remove the 15% of pensionable pay limitation on pension contributions. A scheme limit will remain so that accrued benefits can not exceed 40/60ths.
- **Rule G9** (*Pension debit members: restriction on replacement of debited rights*) has been deleted so as this restriction no longer applies after 5 April 2006. A scheme limit will remain so that accrued benefits can not exceed 40/60ths.

(ii) Amendments required by the new financing arrangements for pensions:

1.4 New financing arrangements were introduced from 1 April 2006 for both the FPS and NFPS.

1.5 The following amendments that have been made to the FPS as a consequence of the new arrangements:

- **Rule B3** (*Ill-Health Awards*) has been amended and requires FRAs to make a payment, as determined by the Secretary of State, for each firefighter who retires with an upper tier ill-health award (currently 4 x pensionable pay) and a payment, as determined by the Secretary of State, for each firefighter who retires with a lower tier ill-health award (currently 2 x pensionable pay). These payments will be made in three annual instalments over a three year period. The first payment should be made on the date the employee retires and the following two payments should be made on the 1 April of the following two financial years.

When a higher tier award is cancelled following a review under Rule K1 and a lower tier is substituted the FRA will receive a refund in its operating account from the pension fund of the difference between the higher tier ill-health charge and the lower tier ill-health charge.

When an award, whether a higher or lower tier, is cancelled and the former recipient does not resume active membership of the FPS, the FRA will make no further payments to the pension fund.

- **Rule B6** (*Repayment of aggregate pension contributions*) has been amended so that, where a firefighter leaves the scheme and receives a refund, a refund of the corresponding employer contributions may be made from the pension fund.
- **Rule F2** (*Current Service*) The new financing arrangements remove the discretion of FRAs to reckon as pensionable service any period where a member has been absent without pay and gives the member the right to have these periods reckoned as pensionable service. The member will, however, be liable to pay both the employee and employer contributions. Rule F2(3) has been amended to reflect this. The FRA will have the discretion to pay the employer's contribution. Unpaid pension contributions must be paid within 6 months of the agreement to repay them.
- **Rule F7** (*Receipt of transfer values*) has been amended so that firefighters will have to make a written request to transfer a pension into the FPS within 12 months of taking up employment.
- **Rule F8** (*Transfer payments between FRAs*) From 1 April 2006, transfer payments will no longer be paid between English FRAs. Transfer payments will continue to be paid in respect of transfers between England and FRAs with the responsibility of the devolved administrations in Scotland and Wales. Rule F8 has been amended so that, where a member transfers from an English FRA to Scottish and Welsh FRAs, the English FRA will pay an appropriate transfer payment. FRAs who receive

transfer value payments from other pension schemes will receive the payments into the pension fund.

- **Rule G2** (*Pension contributions*) has been amended to set out that the FRA shall make a contribution, as a percentage of pensionable pay towards the future pension liability for all serving members of the FPS into the pension fund.
- **Rule G3** (*Election not to pay pension contributions*) G3 has been amended so that, where a member opts out of the FPS, no further employer contributions will be due with effect from the start of the pay period following receipt of the firefighter's election not to pay contributions. Also, where aggregate employee contributions have been repaid, FRAs can transfer the employer contributions, paid in relation to this period, from the pension fund to any other fund maintained by them.
- **Rule L2** (*Expenses and receipts of Fire authorities*) has been deleted and is now dealt with under Part LA.
- **Rule LA** (*Firefighters' Pension Fund*) has been introduced to deal with the Firefighters' Pension Fund. From the 1 April 2006, New Part LA requires each FRA to establish and maintain a Firefighters' Pension Fund (FPF) for the purposes of the Pension Scheme and in connection with rights and liabilities under earlier versions of the Scheme. Pension contributions made by firefighters and their employing authorities will be paid into the FPF and pensions and related payments will be made out of the FPF.

Further guidance regarding the new financing arrangements for firefighters can be accessed via [Guidance](#) or by contacting Kate Hepher on 020 7944 8895. Please note that The Secretary of State may, at any time, in relation to England, review the guidance and amend it if he considers it is appropriate.

(iii) Amendments as a result of the new arrangements for ill-health retirements:

- 1.6 The provisions for determining a scheme member's entitlement to an ill-health award under Rule B3 have been amended to keep the FPS in line with the arrangements that have been agreed for the New Firefighters' Pension Scheme (NFPS).
- 1.7 New two tier ill-health arrangements have been introduced and apply to all cases where the question of whether or not a person is entitled to an ill-health/injury award has arisen on or after 1 April 2006. Any cases where retirement was prior to 1 April 2006, or cases where the FRA determined that H1 consideration was needed before 1 April 2006, are unaffected by the changes.
- 1.8 The amendments that have been necessary to implement these new arrangements for ill-health are:
 - **Rule B3** (*Ill-health award*) has been amended so that the single award has been replaced by two awards i.e. a lower and a higher tier ill-health pension.

Lower tier ill-health pension: A lower tier pension is awarded where the scheme member is able to undertake other regular employment. "Regular employment" is defined as employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of capacity for employment arises. It is calculated in a similar way to a deferred pension under Rule B5(1), without any enhancement of service but taking account of dual accrual.

Higher tier ill-health pension: A higher tier pension is awarded in cases where a scheme member is unable to undertake other regular employment. It is calculated based on service already accrued in the scheme plus enhancements related to length of service. Two pension calculations will be required with the difference between the notional lower tier award that would have been paid, and the actual higher tier award representing the amount of enhancement for the higher tier.

- **Rule K1** (*Review and cancellation of ill-health pensions*) has been amended so that if the condition of a former member on a higher tier pension improves so that they can seek regular employment, the enhanced pension would be cancelled and only the pension equal to a lower tier award will be paid. If the condition of a former member on a lower tier pension worsens there is no substitution of the lower for the higher tier pension, nor is the lower tier award replaced by a higher tier because of general deterioration in health. If the condition improves to the point where the individual can return to a role as a firefighter and the FRA re-employ him/her in that capacity, the lower tier pension will be cancelled. If the individual refuses the job offered by the FRA, the pension would be cancelled and the member would become eligible to a deferred pension under Rule B5.

1.9 Further information and guidance can be accessed via [Guidance on new two tier ill-health arrangements](#)

(iv) Amendments required to close the FPS (1992 Order) to new entrants:

1.10 The FPS has been closed to new entrants from 6 April 2006. However, firefighters recruited on or after 6 April 2006 have been given temporary access to the FPS so that they are protected, e.g. with regard to ill-health and injury benefits, in the period until the NFPS order has been made and comes into operation. These temporary members of the FPS will pay a pension contribution rate of 8.5% of pensionable pay and will be transferred into the NFPS when the Order is made.

1.11 The following amendments have been made:

- **Rule A3** (*Exclusive application to regular firefighter*) has been amended to provide for the Pension Scheme to cease to have effect in relation to persons who take up employment with a fire and rescue authority as regular firefighters on or after 6 April 2006 (and their spouses, civil partners and dependents) on the day on which the new scheme is brought into operation.
- **Rule G2** (*Pension contributions*) has been amended and requires persons who take up employment with a FRA as firefighters on or after 6 April 2006 to make pension contributions at a lower rate than is required of the

firefighters whose employment began before this date. The NFPS will require firefighters whose employment begins on or after 6 April 2006 to transfer to the new scheme, and will require members of the new scheme to make contributions at that lower rate.

(v) Correction amendments:

1.12 We have made correction amendments to Rule C6 and C7.

- **Rule C6** (*Spouse's requisite benefit and temporary pension*) has been amended to give the provision effect from 1 March 1992. This was omitted from the amendment made to Rule C6 in the amendment order made in 2005.
- **Rule C7** (*Award to spouse or civil partner where no other award payable*) discriminated against the spouse or civil partner of a male firefighter. This has been amended in order to equalise the provision.

2.0 The Firefighters' Compensation Scheme Order 2006

2.1 The non-contributory compensatory provisions covering death and injury on duty that were included in the FPS have been removed and have been placed in a new Firefighters' Compensation Scheme (FCS). There have been no substantive changes to the provisions themselves. The FCS has effect from the 1 April 2006 and will apply to members of both the FPS and NFPS.

2.2 Prior to April 2006, where death and serious injury occurred on duty, benefits additional to those from the FPS were payable under Section IX of the Conditions of Service (Grey Book 5th Edition). The Audit Commission took the view that compensation payments made under these provisions were unlawful because Section 27 of the Fire Services Act (now Section 34 of the Fire and Rescue Services Act 2004) provided for the making of a statutory scheme for payments in death. The benefits have therefore been removed from the Grey Book 6th edition and have been replicated in the FCS.

2.3 The benefits remain as they were in the Grey Book but there have been some minor changes necessary in order to standardise the wording with other parts of the FCS and the FPS. The Order therefore includes a transitional provision which allows an individual the right not to be placed in a worse position as a result of incorporating the rules into the FCS. Where an individual thinks that this may occur they must give written notice to their FRA before 30 September 2006.

2.4 FRA's will need to draw this provision to the attention of all their firefighters who may have an entitlement to an award so that they may consider whether to apply for protection.

3.0 Additional guidance regarding the Firefighters' Pension Scheme

- 3.1 **Commutation of the Additional Voluntary Contributions (AVC) element of a transfer payment:** Prior to 6 April 2006, the Home Office had advised FRAs that the FPS could accept transfer payments that included an AVC element but that any post 8 April 1987 AVC element had to be ring fenced so that it could not be commuted to provide a lump sum.
- 3.2 Following HMRC's introduction of the new tax regime for pensions, we have been advised that the tax legislation that had previously imposed the restriction on the commutation of an AVC element has been removed from 6 April 2006. Therefore, subject to the conditions set out in the Finance Act 2004, a tax free pension commencement lump sum of up to 25% can be taken in respect of any AVC elements of a pension.
- 3.3 As the FPS does not have any in-house AVC provisions, it will not require amendment to the Scheme.
- 3.4 **Gratuity in lieu of surviving spouse's pension:** Also, as a consequence of the new tax regime for pensions, where a surviving spouse/civil partner elects, under Rule E5 of the FPS, to commute for a lump sum the survivor's pension, they will have extinguished their rights to all other benefits under the pension scheme. It is therefore important for administrators to note that in these cases the lump sum death grant payable under Rule E1, will have to be paid prior to or at the same time as the Rule E5 gratuity is paid to prevent it from becoming an unauthorised payment.
- 3.5 **Split Scheme Administration:** FPS Circular 2/2006 mentioned the registration requirements for the FPS. The HMRC have now laid the legislation necessary for the FPS, in common with the Police Scheme and the Local Government Scheme, to be treated as a split scheme. Under the legislation FRAs are regarded as sub-scheme administrators with delegated responsibilities and liabilities under the Finance Act 2004. An extract from the legislation listing the responsibilities and liabilities included at Annex A. The full order can be seen at <http://www.opsi.gov.uk/si/si2006/20060569.htm>
- 3.6 **Pension Input Period (PIP):** With the introduction of the new tax regime for pensions and in accordance with the Finance Act 2004, a PIP is needed to determine the increase in the value of a scheme member's pension rights. It is the pension input amount for the pension input period ending within the tax year that will become part of the total pension input amount and tested against the annual allowance.

- 3.7 If a scheme does not take steps to define its own PIP, then it will default to the anniversary of a member's commencement date. For all members of the FPS at 5 April 2006 the default end date of the PIP will be 5 April 2007 but for those joining after the 5 April 2006, the end of the PIP would vary from member to member. Scheme administrators are able to nominate a new end date for the PIP and it would seem advisable, therefore, for PIPs for the FPS to be standardised.
- 3.8 Under HMRC legislation, responsibility for nominating new PIP end dates rests with sub-scheme administrators (FRAs). Therefore, we would recommend that FRAs:
- nominate 31 March 2007 as the end date for this first PIP (the end of the accounting years for FRAs). Thereafter, PIPs would run from 1 April to 31 March of the following year; and
 - use 31 March for both the FPS and the NFPS so that any testing of annual allowances will be using the same data as that required for annual benefit statements.
- 3.9 The Finance Act 2004 requires the nominated date to be notified to individuals and FRAs should therefore advise members accordingly.

Martin Hill

Responsibilities and liabilities of sub-scheme administrators in respect of a sub-scheme

PART 1 Finance Act 2004

<i>Statutory Reference</i>	<i>Subject-matter</i>
Liabilities	
Section 205	Short service refund lump sum charge
Section 206	Special lump sum death benefit s charge
Section 207	Authorised surplus payments charge
Section 215(9)	Lifetime allowance charge – amount of charge
Section 217	Lifetime allowance charge (joint & several with the individual)
Section 227(3)	Annual allowance charge
Section 238(3) and (4)	Pension input period
Section 239	Scheme sanction charge
Information	
Section 250(1)	To make and deliver a registered pension scheme return
Section 254	Accounting for tax by scheme administrators
Interest and penalties	
Section 257	Penalty for failure to comply with a S250 notice.
Section 258(1)	Penalty for failure to provide information within S251(1)(a)
Section 258(2)	Penalty for failure to comply with regulations within S251(1)(b)
Section 259(1)	Penalty for failure to comply with a notice under S252
Section 260(1), (4) and (6)	Penalties for failure to make a return within S254
Section 265(3)	Penalty for winding up a scheme to obtain a winding up lump sum
Section 266(2)	Penalty for transfers to "non" insured schemes (unauthorised transfer)
Section 266B	Scheme liability (inserted by Paragraph 4 Schedule 10 FA 05)
Section 267	Discharge of lifetime allowance charge in the case of good faith.
Section 268	Unauthorised payment surcharge & scheme sanction charge
Scheme administrator	
Section 271	Liability of a scheme administrator
Section 272	Trustees etc. liable as scheme administrator
Section 273	Members liable as scheme administrator

Section 274	Supplementary provisions
Paragraph 1 of Schedule 28	Scheme administrator to receive evidence of member's ill health.
Paragraph 15(2)(b) of Schedule 28	Scheme administrator to agree if a child is a dependant
Paragraph 15(3) of Schedule 28	Scheme administrator to decide whether someone is a dependant.
Paragraph 4(1) of Schedule 29	Scheme administrator to consider evidence of serious ill health
Paragraph 19(1)(d) of Schedule 29	Scheme administrator to nominate arrangement for transfer lump sum benefit.
Paragraph 19(2) (e) of Schedule 29	Scheme administrator to nominate arrangement for transfer lump sum benefit.
Paragraph 9(2) of Schedule 32	Changes to benefit crystallisation event 2
Paragraph 9(3) of Schedule 32	Changes to benefit crystallisation event 2 (inserted by paragraph 43(4) of Schedule 10 to the Finance Act 2005).
Paragraph 13(4) and (5) of Schedule 32	Changes to benefit crystallisation event 3 (inserted by paragraph 43(5) of Schedule 10 to the Finance Act 2005)
Paragraph 14(1A) & (1B) of Schedule 32	Changes to benefit crystallisation event 5 (inserted by paragraph 43(7) of Schedule 10 to the Finance Act 2005)
Paragraph 5 of Schedule 34	Exemption for scheme administrator from s.205 & s.206 charges
Paragraph 17 of Schedule 34	Omits reference to scheme administrator in s. 217
Paragraph 4(1), (2) and (3) of Schedule 36	Transitional provisions for deemed registered schemes
Paragraph 6 of Schedule 36	Pre-commencement liability of scheme administrator