



Firefighters' Pension Scheme Circular

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Action:	For information		
Title:	<i>New Firefighters' Pension Scheme</i>		
Issued by:	Martin Hill Local Government and Firefighters' Pensions Division		

Summary:	This circular advises FRAs on coming into force of the New Firefighters' Pension Scheme and consequential amendments to the Firefighters' Pension Scheme (1992) and to the Firefighters' Compensation Scheme (2006)
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New Firefighters' Pension Scheme

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1.0 The New Firefighters' Pension Scheme (NFPS)

- 1.1 The Firefighters' Pension Scheme (England) Order 2006 (SI 2006 No. 3432) came into force on 25th January 2007, but takes effect from 6th April 2006.
- 1.2 Whilst the Order has effect in England only, the same pension arrangements will be given effect by the devolved authorities in Scotland, Wales and Northern Ireland.
- 1.3 It should be noted that due to technical problems in the printing the Order, as made, has errors. These have affected the numbering of the rules in Part 3, which should be numbered from 1 to 11, rather than 7 to 17; and have resulted in Chapter numbering being consecutive through the document. The numbering of rules and chapters in the table of Contents on page 3 is correct, as are the numbers used in references below. Action is being taken to correct the errors and the Stationery Office is reprinting.
- 1.4 Copies of the NFPS Order can be viewed at:
http://www.opsi.gov.uk/si/si2006/uksi_20063432_en.pdf
- 1.5 Draft guides to the new pension scheme for firefighters have already been issued and have been placed on the firepensions website at
<http://www.communities.gov.uk/index.asp?id=1164954>
- 1.6 A summary of the main parts of the NFPS are as follows:

Membership

It provides a new pension scheme for firefighters who join the service from 6th April 2006 in England. It is open to regular, retained and volunteer firefighters.

Members of the FPS may elect to become members of the NFPS and have the option of transferring any pension accrued in the existing scheme into the new scheme. Special arrangements for transfer in the period until 31st March 2007 were set out in FPSC 13/2006.

Whilst members of the FPS may transfer to the NFPS whatever their role at the time of transfer, eligibility to join the new scheme for those taking up employment on or after 6th April 2006 is limited to those whose role on taking up employment as a firefighter includes:

- (i) resolving operational incidents,
- (ii) leading and supporting others in the resolution of operational incidents.

This wording, which was discussed and agreed with the Firefighters' Pension Committee, is specifically designed to restrict membership to those whose role on joining the Fire and Rescue Service is that of firefighter, crew manager or watch manager *but it is essential that the person's duties include attendance at incident in a firefighting role*. Any person who joins the Service in any more senior role is not eligible to join the NFPS. The LGPS would be the appropriate pension scheme for them to join.

Retirement age

The NFPS has a normal retirement age of 60 (Part 2, rule 3(1)).

A firefighter member may retire early at any age from 55 or before age 60, but subject to an actuarial reduction in the pension paid (Part 3, rule 5). The reduction notified by the Scheme Actuary is 5% for each year before normal benefit age (i.e. age 65).

An authority may initiate early retirement, in which case it will pay the amount of any actuarial reduction (Part 3, rule 6).

A member of the NFPS can accrue more than 40 years' pensionable service up to a limit of 45 years. However, he/she cannot transfer pension credit from another scheme or buy additional pensionable service in the NFPS so that total service exceeds 40 years by the normal retirement age (Part 10, rule 2).

A deferred pension will be paid at the normal benefit age of 65 (Part 2, rule 3(2) and Part 3, rule 3).

Qualifying period

Members of the NFPS qualify for a pension after 3 months' qualifying service (Part 2, rule 2).

Where someone has less than 3 months' service when they leave a refund of pension contributions would be made (Part 3, rule 8).

Pension benefits

Part 3 sets out the pension benefits payable to the firefighter member. It includes ordinary (rule 1) and ill-health (rule 2) awards.

Ill-health pensions will be in two tiers. Those who are permanently unable to perform any duties of the role in which they were last employed will receive an immediate pension based on the amount of pensionable service accrued in the scheme. Those who are unable to undertake any kind of regular employment (defined as being able to work on average at least 30 hours per week over a 12 month period) will also receive a higher tier ill health pension.

The method of calculating a higher tier ill-health pension is set out in paragraph 2 or 3 of Annex 1.

Under Part 1, rule 3, in determining whether a person is permanently disabled an authority must have regard to whether the disablement will continue to the person's normal retirement age, or in the case of a person who has taken a deferred pension, by normal benefit age.

As referred to above, a firefighter member may request early payment of an ordinary pension but the pension will be subject to actuarial reduction. (Part 3, rule 5). The reduction will be 5% for each year the pension is paid before the normal benefit age.

There is also provision for the fire and rescue authority to permit a firefighter member to retire early from age 55 on full pension, but the authority would have to meet the cost of that early payment (Part 3, rule 6).

Entitlement to two pensions

To protect a firefighter member's pension rights if his/her pay reduces, for example on a change of role, a split pension would be awarded so that service before and after the reduction may be used to calculate separate pensions using the pensionable pay for the first period before the reduction and, for the later period, the pensionable pay at the end of service. When the member retires he/she may have two pensions or can aggregate the service before and after the split and take one pension based on pensionable pay at the end of service if it would be more advantageous (Part 3, rule 7).

Commutation

Members will be able to commute up to a quarter of their pension (except for a higher tier ill-health pension) for a lump sum of £12 for every £1 of pension commuted (Part 3, rule 9).

Allocation

A member will be able to allocate up to a third of any pension to which they may be entitled or prospectively entitled to a spouse, civil partner, nominated partner or someone substantially dependent on the member to be paid in the event of the member's death (Part 3, rule 11).

Survivor benefits

Part 4 sets out the pension benefits payable to adult survivors and eligible children in the event of the death of a member of the scheme.

The NFPS extends benefits to a nominated partner, whether unmarried or, in the case of same sex couples, with whom the firefighter has not formed a civil partnership.

Eligibility for a dependent member's award in the case of a nominated partner is set out in rule 1(6) of Part 2 of the Scheme. The rule allows a firefighter member to nominate a person who:

- has been living with the member, otherwise than as his/her spouse or civil partner, in a long-term relationship;
- is not the spouse or civil partner of any other person when the firefighter dies;
- is registered with the scheme administrator as the nominated partner; and
- is financially dependent on the firefighter member, or they are financially inter-dependent.

The provision defines long-term relationship as a period of two years although the authority has a discretion to allow a shorter period in any particular case.

Survivor pensions will not be withheld or restricted if the spouse or civil partner is estranged. Rule 3 of Part 4, however, sets out that where the adult survivor is

12 or more years younger than the firefighter member the survivor pension would be reduced by 2.5% for each year after the 12 years up to a maximum of 50%.

Rules 9 and 10 of Chapter 2 of Part 4 set out that where there is no adult survivor but there is an eligible child (or children) any pension that would have been paid to the adult survivor would be paid to the eligible child (or children).

Death grant

Part 5 sets out that a death grant will be paid and that this will be 3 times the pensionable pay at the date of death (compared with 2 times the pensionable pay in the FPS) and includes provision to protect the position of those who may have varied their working pattern, for example where a scheme member may have recently switched to part-time working, so that without the protection the death grant would be reduced.

Also included is a guarantee that pension would be paid for 5 years so that should a pensioner member die within 5 years of retiring a post-retirement death grant based on pension may be payable (Part 5, rule 2).

Pensions on divorce

Part 6 sets out the arrangements for pension sharing on divorce.

It should be noted that rule 5 of Part 6 provides for the payment of a post-retirement death grant, based on the pension that would have been paid, if the pension credit member dies within five years of the pension coming into payment and before his/her 75th birthday.

Reservists

Part 7 sets out the arrangements for treating firefighters who are members of the reserve forces.

Determination of questions and appeals

Part 8 and Annex 2 set out how questions and appeals will be handled. In general these follow those set out in Part H and Schedule 9 of the Firefighters' Pension Scheme. However there are three modifications of which authorities need to be aware.

The first is the provision in rule 3 of Part 8 which allows, in cases where new evidence on an issue wholly or partly of a medical nature is provided by the firefighter member, the authority to send a copy of the new evidence to the independent qualified medical practitioner (IQMP) and invite him to reconsider his opinion.

Secondly, paragraph 4 of Annex 2 provides for a member of the board of medical referees to review the documents submitted with an appeal under rule 4 of Part 8, and to identify any other information which the member considers would be desirable for the purpose of determining the appeal; and, if it be the case, indicate whether the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.

Thirdly, rule 5 provides for appeals on other (non medical) issues. Unlike the FPS, the new scheme does not provide for an appeal to the Crown Court, but sets out that any appeal will be progressed through the resolution of disputes procedures required by section 50 of the Pensions Act 1995 and the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996. [Guidance on the agreed IDR procedure for the Fire and Rescue Service is given at Annex 12 of the Commentary on the Firefighters' Pension Scheme 1992.]

It is the intention to reflect these developments in the FPS

Review, withdrawal and forfeiture of award

Part 9 sets out the arrangements for the review, withdrawal and forfeiture of awards.

Qualifying and pensionable service

Part 10 sets out what service will enable a firefighter member to qualify for a pension and the amount of service that can reckon towards a pension. Rule 4 sets out a provision to enable a firefighter member to purchase unpaid periods of service that would not reckon for pension. The member would be responsible for his/her own and the employer's costs in these circumstances unless the authority agreed to pay the employer costs. More information about optional contributions is given in Part 11.

Pensionable pay

Part 11 sets out the provisions on pensionable pay, pension contributions and the purchase of additional service.

Rule 1 defines pensionable pay as a firefighter member's pay in relation to the performance of the duties of his/her role, other than any allowance or emoluments that are paid to him/her on a temporary basis; and any permanent emoluments, including in the case of a retained firefighter, any retaining allowance.

In discussing the definition of pensionable pay in the Firefighters' Pension Committee it was made clear that it was intended that the definition would allow the following payments to be treated as part of pensionable pay:

- Flexible duty allowance which may be paid to station managers and above. It was accepted that: (i) this represented 20% of the member's pay and should be reflected in any pension award ; and (ii) if the member moved at any time to a post which did not carry the allowance, the matter would be covered by the provisions of rule 7 of Part 3 (entitlement to two pensions) so that there would be no loss of any element of pension for which contributions had been made;
- Temporary promotions. It is usual in public service pension schemes for pay on temporary promotion to be pensionable since any person who is temporarily promoted would normally be expected to have demonstrated the competencies of the higher post and either to be appointed to the post or another post on substantive promotion without reverting to the previous post.

Acting up would not be pensionable as this should be short-term, dictated by the exigencies of the service, and the person may not need to have demonstrated all the competencies of the higher role.

The earnings cap which applies to members of the FPS under rule G1(2) has been retained for members of the NFPS by rule 1(3) of Part 11. It has been set at £108,600 for the tax year 2006/07.

Guidance on pensionable pay for retained firefighters is given in the guidance note on “The assessment of benefits for firefighters who undertake retained duties” at <http://www.communities.gov.uk/index.asp?id=1164954>

The contribution rate is 8.5% of pensionable pay (compared to 11% in the FPS) (Part 11, rule 3).

Part 11, also prescribes what would constitute pensionable pay and the provision to enable firefighter members to purchase additional service.

Other main provisions

Part 12 provides for the transfer of pensions into and out of the Scheme. It is the intention that the Department should apply for the NFPS to participate in the Public Sector Transfer Club.

Part 13 sets out the arrangements for management of the pension fund by the Fire and Rescue Authority and the payments required by the employers. The provisions follow those in Part LA of the FPS.

Part 14 makes provision for the payment of awards.

Part 15 sets out how, as a contracted-out scheme, guaranteed minimum pensions will be dealt with for both the firefighter member and any adult survivor. Rule 4 also sets out the requirement that an annual benefit statement should be issued to each firefighter member

2.0 Amendments to the Firefighters’ Pension Scheme (FPS)

- 2.1 The Firefighters’ Pension Scheme (Amendment) (No.2) (England) Order 2006 (SI 2006 No.3433) came into force on 25th January 2007. The order makes amendments to the FPS and is largely consequential on the introduction of the new pension scheme. It has effect from 6th April 2006.
- 2.2 Copies of the FPS Amendment Order 2006 can be viewed at http://www.opsi.gov.uk/si/si2006/uksi_20063433_en.pdf
- 2.3 A summary of the main amendments to the FPS are as follows:

Short service awards

Under the Pension Schemes Act 1993, where a transfer payment in respect of rights under a personal pension scheme has been made to the scheme the scheme member is eligible for a pension, rather than a short service gratuity, regardless of length of service. This was not explicit in the rules of the FPS but is included in the drafting of the NFPS. Amendment has been made to Rules B2 (Short service award) and B5 (Deferred pension) for parity between the schemes.

Ill-health awards

Both pension schemes contain provision for “two-tier” ill health awards. All scheme members who are ill-health retired receive a lower tier pension. Those who are permanently disabled from undertaking any further regular employment also qualify for a higher tier pension. The FPS restricted “regular employment” to employment outside of the Fire and Rescue Authority whereas the test should be disablement from any regular employment, as drafted in the new scheme. Amendment has been made to Rule B3 for parity between the schemes.

Commutation

Scheme members are able to commute a portion of pension for a lump sum. Commutation from an ill-health pension is limited to a portion of the lower tier element to prevent over-payment in circumstances where a higher tier pension is reduced on review. Amendment has been made to Rule B7 in line with the drafting in the new scheme which is more explicit.

Limits on lump sum payments

The FPS provides for the commutation of small pensions for lump sum payments. The Finance Act 2004, Schedule 29, limits trivial commutation to a prescribed limit in prescribed circumstances. The FPS rules were drafted in a way that would allow pensions of a greater value to be commuted with the consequence that HM Revenue and Customs might regard the payments as unauthorised. This could have resulted in a tax charge on the beneficiary and the Scheme Administrator. Amendment has been made to Rules E5 and E6 to prevent this from happening.

Definition of “retained” and “volunteer” firefighter

Although retained and volunteer firefighters are not eligible for membership of the FPS, the scheme includes a definition because of the link with the provisions of the Firefighters’ Compensation Scheme (FCS). Under the FCS, retained and volunteer firefighters are eligible for benefits if they are killed or injured on duty and where this occurs their benefits are calculated as if they had been a regular firefighter. Retained and volunteer firefighters are eligible for membership of the new scheme and the definition has been updated for that scheme. The definitions in the FPS and the FCS have therefore been amended for consistency.

3.0 Amendments to the Firefighters' Compensation Scheme (FCS)

- 3.1 The Firefighters' Compensation Scheme (England) (Amendment) Order 2006 (SI No. 2006 No. 3434) came into force 25th January 2007. The order makes amendments to the FCS and is largely consequential on the introduction of the new pension scheme. It has effect from 6th April 2006.
- 3.2 Although the FCS is separate from pension scheme rules, providing for compensation where a firefighter is killed or injured whilst on duty, the scheme has direct links to the pension schemes in that, typically, the death and injury awards provide a top up to pensions, gratuities and grants paid from the pension schemes. Therefore compensation scheme provisions, by necessity, need to make reference to pension scheme rules. It also shares terminology with the pension schemes, for example, using pensionable pay, pensionable service, qualifying service etc (actual or, in the case of optants-out of the pension scheme and other non-members who have an entitlement to an injury award, notional) as the basis for calculating compensation awards.
- 3.3 The pension schemes and the FCS therefore co-exist, with members of both pension schemes being eligible for compensatory benefits. The NFPS, whilst having similarities to the FPS, contains some significant changes. For example, both schemes are 40/60th schemes but the FPS gives "double accrual" after 20 years' service meaning that a member may retire and draw a pension after only 30 years' service. The NFPS has single accrual. The FPS restricts membership to regular firefighters, whereas the NFPS is open to regular, retained and volunteer firefighters. The FCS, therefore, requires amendment to ensure that the provisions will apply to the new scheme.
- 3.4 Copies of the FCS Amendment Order 2006 can be viewed at http://www.opsi.gov.uk/si/si2006/uksi_20063434_en.pdf
- 3.5 A summary of the main amendments to the FCS are as follows:

Retained and volunteer firefighters

Prior to 6th April 2006, retained and volunteer firefighters were not eligible for membership of the FPS but were eligible for benefits from the compensation scheme in the event of death or injury on duty. Benefits were calculated as if the person were a whole-time regular firefighter. From the 6th April, retained and volunteer firefighters are eligible for membership of the NFPS. Those who join the Fire and Rescue Service after 6th April will be eligible for benefits from the compensation scheme whether or not they join the NFPS but their benefits will be calculated on the same basis as that for new scheme members i.e., on a pro-rata to those of a whole-time firefighter. This is consistent with regular firefighters who work part-time whose benefits from any of the schemes are calculated on a pro-rata basis. The compensation rules have therefore been amended to provide for this. Retained and volunteer firefighters who were members of the Fire and Rescue Service prior to 6th April will have their entitlement to calculation of benefits from the compensation scheme on a whole-time basis protected regardless of whether they join the NFPS.

Awards on death to spouses and civil partners

The FPS places limits on the pension awards that are payable in circumstances where spouses or civil partners are living apart at the time of death or if the beneficiary re-marries or re-forms a civil partnership. These limits are reflected in the compensation scheme. Members of the NFPS are not subject to these limits and the compensation scheme Part 3, Rules 4 and 5 have therefore been amended to make clear that the limitations do not apply to these members or to firefighters who join the Fire and Rescue Service on or after the 6th April 2006 and who “opt out”. The limitations will continue to apply to those retained and volunteer firefighters who have their entitlement to compensation benefits at pre-6th April levels protected and do not join the new scheme.

The NFPS provides for a reduction in the survivor pension where the survivor is more than 12 years younger than the deceased. This provision has been introduced to the compensation scheme at Part 3, Rule 6 and will apply to members of the NFPS and firefighters who join the Fire and Rescue Service on or after 6th April 2006.

Awards on death to children

The compensation scheme carries over the limitations in the FPS where child survivor benefits are not payable once a child has attained the age of 17 unless they are permanently disabled or in full-time education or full-time vocational training. The NFPS provides for child survivor benefits to cease at age 18 (with the same exceptions) in line with new HMRC rules. The opportunity has, therefore, been taken to bring the compensation scheme in to line by amending Part 4, Rule 3.

Awards to servicemen

The pension schemes provide for awards to firefighters who become permanently disabled whilst undertaking reserve or auxiliary duty in the armed forces. The compensation scheme provides for a “top up” of those awards where there is a qualifying injury (i.e., duty related). The terminology and references to relevant legislation have been carried over to the compensation scheme from the FPS. The NFPS refers to “reservists” rather than “servicemen” and to the Reserve Forces Act 1980 and 1996. A new Part 7A has, therefore, been added to the compensation scheme to ensure that the provisions apply equally to members of the NFPS who undertake duty as reservists.

Review, withdrawal and forfeiture of awards

The compensation scheme currently refers to a normal benefit age of 60 in connection with the receipt of a deferred pension from the FPS. A member of the NFPS would receive a deferred pension at age 65 and amendment to Part 9, Rule 2 has therefore been made to differentiate between the different deferred pension ages.

Payment of awards and financial provisions

The compensation scheme provides for the prevention of duplication of benefits where a firefighter is employed by more than one Fire and Rescue Authority (typically as a regular with one, and a retained with another). Retained firefighters will be eligible for membership of the NFPS and the provisions in Part 10 of the compensation scheme have been amended to provide for situations where a firefighter may legitimately be entitled to more than one ill-health retirement pension but only a single injury pension.

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