

FIREFIGHTERS PENSION COMMITTEE

AMENDMENTS TO FPS - INSTRUCTIONS

At the 8th meeting of the FPC we undertook to copy and circulate the instructions given to lawyers for amending the FPS. These are attached.

The Committee is invited to note.

ODPM
February 2006

INSTRUCTIONS

A number of changes need to be made to the Firefighters' Pension Scheme Order before April 2006. These fall into two main groups: those consequential on the new tax regime for pensions and those required by the new financing arrangements for firefighters' pensions.

New Tax Regime for Pensions

As a result of the Finance Act 2004, modified by the 2005 Act, there will be a new tax regime for pension schemes from 6 April 2006.

There are two areas of impact

(i) Injury Benefits

Under the new regime, pension schemes will need to be registered in order to benefit from tax privileges. HM Revenue and Customs (HMRC) will recognise relevant statutory schemes such as the FPS automatically and treat them as registered under the new tax regime. However, certain non-contributory compensatory provisions covering death and injury that are currently in the FPS will be regarded as unauthorised under the new regime. Because they will be unauthorised, any payments under these provisions would result in a tax liability for members (injury awards are currently untaxed) and an additional administrative burden for fire and rescue authorities. Injury benefits would also add to the value of a member's pension for determining the Lifetime Allowance (LTA), with an adverse impact on members of the FPS.

We therefore need to remove injury awards from the FPS before 6 April 2006 to ensure that members are not penalised. Instead we would propose that there should be a freestanding Firefighters' Compensation Scheme (FCS) to hold the provisions removed from the FPS. HMRC have confirmed that a separate compensation scheme will resolve any problems for members of the FPS and for FRAs.

We have therefore prepared a schedule identifying the provisions of the FPS which will either need to be removed to the new Firefighters' Compensation Scheme or amended. This is at Annex A. We assume that you will give guidance on the extent to which some rules may need to be replicated in the new compensation scheme or the extent to which cross reference to the FPS would be more appropriate: for example the same medical appeal arrangements as provided for in Rule H2 will be required for the compensation scheme.

(ii) Death benefits

In addition, we need to take the opportunity for the death and serious injury provisions previously contained in the firefighters' Conditions of Service 5th edition (Grey Book) to be included in the new FCS. The District Auditor has

taken the view that compensation payments made under these provisions are ultra-vires because section 26(1) of the Fire Services Act 1947 provided for the making of a statutory scheme for payments on death. We would therefore wish to place the Grey Book benefits on a legal basis. The provision will need to give retrospective authority to awards previously made.

Ministers have agreed that the Grey Book payments should be replicated in the new FCS and have given assurances to the Fire and Rescue Service that this will be done. Upon this basis FRAs have continued to make Grey Book payments.

The intention is to replicate these provisions in the new FCS. Some changes will, however, be required to standardise the wording for the FCS and to ensure that there is consistency. The changes required are identified in Annex B.

Section IX. 13 of the Grey Book provides for compensation for “death or serious injury” in the form of a lump sum equivalent to five years' pensionable pay of a qualified firefighter in the brigade concerned after four years' service, at the rate applying at the date of the accident. In the case of death, this is paid jointly to the employee's dependants. Where there are no dependants there is a flat-rate payment of £950 to the deceased's estate. The amounts payable under the Grey Book are subject to abatement by any damages or other compensation received by the employee or his or her dependants and any gratuities payable under the Firefighters' Pension Scheme, other than the difference between the gratuity payable with the widow's/widowers *special* pension and that payable with the widow's/widower's *augmented* pension.

Work was done in 2000 by the Home Office on drafting an amendment to the FPS to provide for the Grey Book payments but, after the agreement of stakeholders to the changes had been secured, HM Inland Revenue raised objections as a result of which the matter was not pursued and we took the view that we would have to make the necessary provision at such time as we developed a separate compensation scheme. HMIR's objection was not to the intention but to the inclusion of the provision in the FPS. The objection does not extend to including provision in the proposed compensation scheme.

(iii) Other tax related amendments

This regime is described by HM Revenue and Customs as tax simplification. Whilst it may be simpler in the long run than the existing regime, the matter is proving complex for us as administrators. What is set out in the instructions are the changes which we regard as necessary to meet the requirements of the Finance Acts 2004 and 2005. We have discussed these with HMRC and are reasonably satisfied that we have identified all the changes which are required. These are detailed as part of the schedule in Annex C.

New Financing Arrangements

You will be aware that new financing arrangements for firefighters' pensions are to be introduced from 1 April.

There are two groups of changes which will be needed. The amendments are detailed in Annex C.

(i) New financing arrangements

The scheme is a pay-as-you-go scheme and pensions are paid out of revenue. Employee contributions are treated as revenue. There is no employer contribution. From April, it is proposed that employers should pay contributions and that together with the employees contributions, these will be paid into a pension account (to be known as a pension fund) from which pensions will be paid. If in any year there is a shortfall on receipts against payments, the Government will make good the "deficit" from central funds. If there is a surplus, the Government will recover the money.

(ii) New ill-health retirement provision

There will in future be two tier arrangements which will follow similar principles to those proposed for the New Firefighters' Pension Scheme. A lower tier paid when a person is capable of undertaking regular employment; and a higher tier award when the person is unable to undertake regular employment. It is intended that these should come into operation at the same time as the new financing arrangements as they have implications for the (pension) contributions to be paid by FRAs as employers. We will provide instructions with the instructions for the new financing arrangements.

Firefighters' Pension Scheme 1992 (FPS):**Removal and Amendment of Compensation provisions to meet requirements of Tax Rules from 6 April 2006.**

Rule No.	Content	Instruction
Part A General provisions and retirement		
A1	Citation and commencement	
A2	Interpretation	
A3	Exclusive application to regular firefighters	FCS will require a similar rule or a cross reference to the FPS.
A4	Application to temporary employment connected with fire services	FCS will require a similar rule but with amendment to A4(3)(d) to remove references to A14 and A15.
A5	Application to permanent employment as instructor	FCS will require a similar rule but with amendment to A5(3)(d) to remove references to A14 and A15.
A6	No application to auxiliary firefighter	
A7	Reckoning of service for purposes of awards	FCS will require a similar rule or a cross-reference to the FPS.
A8	Aggregate pension contributions	
A9	Qualifying injury (<i>definition</i>)	Remove from the FPS. We do not think that a definition of "qualifying injury" is needed in the Pension Scheme.
A10	Disablement	Remove from the FPS. The FCS will require a similar rule.
A11	Death or infirmity resulting from injury	Remove from the FPS. The FCS will require a similar rule.
A12	Relevant service in the armed forces	FCS will require a similar rule or a cross reference to the FPS.
A13	Normal pension age	FCS will require a similar rule or a cross reference to the FPS.

Rule No.	Content	Instruction
A14	Compulsory retirement on grounds of efficiency of brigade	
A15	Compulsory retirement on grounds of disablement	
A16	Effective date of retirement	FCS will require a similar rule or a cross reference to the FPS.
Part B Personal awards		
B1	Ordinary pension	
B2	Short service award	
B3	Ill-health award	Remove Rule B3(2)(a) from the FPS and amend B3(3) to remove reference to paragraph (2)(a). The FCS will require a cross reference to the FPS.
B4	Injury award	Remove Rule B4 from the FPS. The FCS will require a similar rule.
B5	Deferred pension	In Rule B5(2)(b) remove reference to Rule B4.
B6	Repayment of aggregate pension contributions	In Rule B6 (1)(b), Rule B4 has to be removed from the reference to "rules B1 to B5".
B7	Commutation	Rule B7(11) to be amended to cross-refer to the FCS as Rules I2(3) and (4) include compensatory elements.
B8	Commutation – small pensions	FCS will require a similar rule or cross-reference to the FPS to cover small compensatory awards.
B9	Allocation	Rule B9(16) to be amended to cross-refer to the FCS as Rules I2(3) and (4) include compensatory elements.
B10	Limitation of commuted or allocated portion of pension	Rule B10(2) to cross-refer to the FCS as rules I2(3) and I4 include compensatory elements.
B11	Deduction of tax from certain awards	
B12	Pension debit members	
B13	Part-time members	FCS will require a similar rule or a cross-reference to the FPS.
Part C Awards on death – spouses		
C1	Spouse's ordinary pension	Rules C1(c) and (d) will need to remain to give entitlement to an ordinary award rather than a special award but amendment is required to cross-refer to the FCS. FCS will need to deal with the top up in the difference between C2 and C3 awards, in circumstances where a firefighter dies as a result of an injury.
C2	Spouse's special award	Remove Rule C2 from the FPS. The FCS will require a similar rule to provide for benefits paid under C1 to be topped up where C2 would apply.

Rule No.	Content	Instruction
C3	Spouse's augmented award	Remove Rule C3 from the FPS. The FCS will require a similar rule to provide for benefits paid under C1 to be topped up where C3 would apply.
C4	Spouse's accrued pension	
C5	Limitation on award to spouse by reference to date of marriage	Amendment to Rule C5(1) required to exclude reference to Rules C2 and C3.
C6	Widow's requisite benefit and temporary pension	Amendment to Rule C6(1)(b) required to remove reference to Rule C2.
C7	Spouse's award where no other award payable	Amendment to Rule C7(1) required to remove reference to Rule C2.
C8	Limitation where spouses living apart	Amendment to Rule C8 required to remove all references to Rules C2 and C3 where they occur. The FCS will require a similar rule or a cross-reference to the FPS.
C9	Effect of remarriage	FCS will require a cross-reference to the FPS.
C10	Pension debit members	
Part D Awards on death – children		
D1	Child's ordinary allowance	Rules D1(c) and (d) will need to remain to give entitlement to an ordinary allowance rather than a special allowance but amendment is required to cross-refer to the FCS.
D2	Child's special allowance	Remove Rule D2 from the FPS. The FCS will require a similar rule to provide for benefits paid under D1 to be topped up where D2 would apply.
D3	Child's special gratuity	Remove Rule D3 from the FPS. The FCS will require a similar rule to provide for benefits paid under D1 to be topped up where D3 would apply.
D4	Child's accrued allowance	
D5	Child's allowance or special gratuity – limitations	Amendment to Rule D5 required to remove references to special gratuity from the heading. Rule D5(7) which applies to special gratuities should be removed. The FCS will require a similar rule to provide for limitations to benefits paid under D2 and D3. Amend to limit payment to age 23 except for disabled children and protected cases (FA04 Schedule 28 paragraph 15 refers).
D6	Pension debit members	
Part E Awards on death – additional provisions		
E1	Lump sum death grant	
E2	Adult dependent relative's special pension	Remove Rule E2 from the FPS. The FCS will require a similar rule to provide for benefits to Adult dependent relatives.

Rule No.	Content	Instruction
E3	Dependent relative's gratuity	The FCS will require a similar rule for Dependent relative's gratuity.
E4	Payment of balance of contributions to estate	Amendment to Rule E4(2)(b) required to delete the reference to Rule B4. FCS will require a similar rule or a cross-reference to the FPS.
E5	Gratuity in lieu of surviving spouse's pension	Amendment to Rule E5(2)(a) required to delete the reference to Rule C2. FCS will require a similar rule or a cross reference to the FPS.
E6	Gratuity in lieu of child's allowance	FCS will require a similar rule or a cross reference to the FPS.
E7	Limitation on discretion to commute pension or allowance for gratuity	Remove E7(5) from the FPS as I 2(3) and I 4 are compensatory provisions.
E8	Increase of pensions and allowances during first 13 weeks	Amendment to Rule E8(1) required to remove references to spouse's special pension; E8(4)(b) to remove references to injury pension; E8(5) to remove refernce to a child's special allowance. There should be cross-reference to the FCS to ensure that only one amount of 13 week payment is made.
E9	Flat rate awards	
Part F Pensionable service transfer values		
F1	Reckoning of and certification as to pensionable service	FCS will require a cross reference to the FPS for those compensation awards that are based on pensionable service.
F2	Current service	
F2A	Maternity, paternity and adoption leave	
F3	Previous service reckonable without payment	
F4	Previous service reckonable on payment	
F5	Period during which injury pension was payable	FPS will require a cross-reference to the FCS.
F6	War service	
F6A	Previous service following actionable loss	

Rule No.	Content	Instruction
F6B	Calculation of amount of restitution payment	
F7	Receipt of transfer value	
F8	Transfer payments between fire authorities	
F9	Payment of transfer values	
Part G Pensionable pay and contributions		
G1	Pensionable pay and average pensionable pay	Amendment to Rule G1(4) (a) required to remove references to B4, C2, D2, D3 and E2. Amend G1(4)(b) accordingly. FCS will require a cross-reference to the FPS for Compensation awards based on pensionable and average pensionable pay.
G2	Pension contributions	
G2A	Optional contributions during maternity and adoption leave	
G3	Election not to pay pension contributions	
G4	Continued payment of additional and further contributions	
G5	Purchase of increased benefits	
G6	Election to purchase increased benefits	
G7	Payment of periodical contributions for increased benefits	
G8	Effect of payment for increased benefits	
G9	Pension debit members restriction on replacement of debited rights	
Part H Determination of questions and appeals		

Rule No.	Content	Instruction
H1	Determination by fire authority	A similar rule will be required in the FCS although the questions to be determined in H1(2) will be those relating to a “qualifying injury”, “degree of disablement”. Amendment to Rule H1(2)(c) required to remove reference to “qualifying injury” and “degree of disablement” at (c) and (d). The FCS will also need to provide for a review of awards so that the question at (e) would appear to be needed in both the FPS and the FCS.
H2	Appeal against opinion on a medical issue	Similar provision will be required in the FCS unless the matter can be dealt with by cross reference.
H3	Appeal to Crown Court or Sheriff	Similar provision will be required in the FCS unless the matter can be dealt with by cross reference.
Part I Serviceman		
I1	Preliminary	
I2	Awards to servicemen	Amendment to Rule I2(3) required to remove reference to a “qualifying injury”. The FCS will require a similar rule.
I3	Awards on death of servicemen	Amendment to Rule I3(3) required to remove reference to a “qualifying injury”. The FCS will require a similar rule to provide for the awards to spouses/civil partners and children mentioned.
I4	Servicemen who resume service as regular firefighters	Remove Rule I4 from the FPS. The FCS will require a cross-reference to the FPS for the method of assessment of awards.
I5	Servicemen who do not resume service in their former brigade	
I6	Pensionable service	
I7	Pension contributions	
Part IA Pension credit members		
IA1	Pension credit member’s entitlement to pension	
IA2	Commutation of the pension credit benefit	
IA3	Death grants where pension credit member dies before pension credit benefits payable	
IA4	Application of general rules (<i>pension credit members</i>)	
Part J Special cases		

Rule No.	Content	Instruction
J1	Guaranteed minimum pensions	Amendment to Rule J1(6)(b) required to remove reference to “injury pension”.
J2	Revaluation of guaranteed minimum	
J3	Whole time member of brigade who is not a regular firefighter	Remove Rule J3 from the FPS. The FCS will require a similar rule.
J4	Part time member of brigade	Remove Rule J4 from the FPS. The FCS will require a similar rule
J5	Members of brigade other than regular firefighters – supplementary	Remove Rule J5 from the FPS. The FCS will require a similar rule
J6	Other special cases (<i>as covered by Pts IV and V of Sched 11</i>)	
Part K Revision and withdrawal of awards		
K1	Cancellation of ill-health and injury pensions	Amendment to Rule K1(5) required to remove reference to “injury pension”. The FCS will require a similar rule on cancellation/review of injury awards.
K2	Reassessment of injury pension	Remove Rule K2 from FPS. The FCS will require a similar rule on reassessment of injury pension.
K3	Reduction of award in case of default	Amendment to Rule K3(1) required to remove reference to “injury award”. The FCS will require a similar rule on reduction in case of default.
K4	Withdrawal of pension during service as a regular firefighter	FCS will require a similar rule to withdraw injury pension during service.
K5	Withdrawal of pension on conviction of certain offences	Amendment to Rule K5(4) required to remove reference to “injury pension”. The FCS will require a rule excluding injury pensions from withdrawal.
Part L Payment of awards and financial provisions		
L1	Authorities responsible for payment of awards	Remove Rule L1(2), L1(5) and L1(6) from the FPS. The FCS will require similar rules on responsibility for payment of awards.
L2	Expenses and receipts of fire authorities	

Rule No.	Content	Instruction
L3	Payment of awards	Amendment to Rule L3(7) required to remove reference to an “injury gratuity” under rule B4. The FCS will require a similar rule on payment of awards or a cross reference to the FPS.
L4	Prevention of duplication	Remove Rule L4(3), (4)(a) and (5) from the FPS. The FCS will require a similar rule on duplication and a cross reference to the FPS.
L4A	Prevention of duplication: other injury awards for persons who are both regular and retained firefighters	Amendment to Rule L4A required cross-referring to FCS.
L4B	Prevention of duplication: other awards for spouses or children of persons who are both regular and retained firefighters	Amendment to Rule L4B required to cross-refer to FCS.
L5	Payment of awards – supplementary	
Part M Supplemental provision		
M1	Transitional and other matters	

<i>Schedule 1: Interpretation</i>		
Sched 1 Pt I	Glossary of expressions	Remove definition of “qualifying injury” from Schedule 1 or cross- reference to the FCS.
Sched 1 Pt II	Expressions related to National Insurance and Social Security Acts	
<i>Schedule 2: Personal awards</i>		
Sched 2 Pt I	Ordinary pension	
Sched 2 Pt II	Short service pension	
Sched 2 Pt III	Ill-health pension	

Sched 2 Pt IV	Short service or ill-health gratuity	
Sched 2 Pt V	Injury awards	Remove Schedule 2 Part V from FPS. The FCS will require a similar rule on injury awards.
Sched 2 Pt VI	Deferred pension	
Sched 2 Pt VIA	Calculation of awards for part-time service	Remove Schedule 2 Part VIA(d) and (e) from the FPS. The FCS will require a similar rule on part-time service or a cross-reference to the FPS.
Sched 2 Pt VII	Reduction of pension at State pensionable age	
Sched 2 Pt VIII	Reduction of pension related to up-rating of widow's pension	
Schedule 3: Awards on death – spouses		
Sched 3 Pt I	Spouse's ordinary pension	
Sched 3 Pt II	Spouse's special pension	Remove Schedule 3 Part II from the FPS. The FCS will require a similar rule on the spouse's special pension.
Sched 3 Pt III	Spouse's accrued pension	
Sched 3 Pt IV	Pension for surviving spouse of post-retirement marriage	Amendment to Schedule 3 Part IV required to remove the reference to special and augmented awards in 1(1) and (2)(b). The FCS will require a similar rule or a cross-reference to the FPS.
Sched 3 Pt V	Spouse's requisite benefit pension	
Schedule 4: Awards on death – children		
Sched 4 Pt I	Child's ordinary allowance	Amendment to Schedule 4 Part I (2)(2) required to remove reference to the reduction in injury award. The FCS will require a cross reference to the FPS.
Sched 4 Pt II	Child's special allowance	Remove Schedule 4 Part II from the FPS. The FCS will require a similar rule including a cross-reference to the formula for calculating part-time service.
Sched 4 Pt III	Child's accrued allowance	

Sched 4 Pt IV	Reduction in child's allowance during full-time remunerated training	Amendment to Schedule 4 Part IV1(1) required to remove reference to rule D2 and in 2(2) to remove reference to paras. 2(b) and 3(b) of Schedule 4 Part II. The FCS will require a similar rule on reduction during full-time remunerated training.
Schedule 5: Awards on death – additional provisions		
Sched 5 Pt I	Adult dependent relative's special pension	Remove Schedule 5 Part from the FPS. The FCS will require a similar rule for adult dependent relative's special pension.
Sched 5 Pt II	Gratuity in lieu of surviving spouse's pension	
Sched 5 Pt III	Gratuity in lieu of child's allowance	
Schedule 6: Pensionable service and transfer values		
Sched 6 Pt I	Payments in respect of previous service	FCS will require a cross-reference to the FPS.
Sched 6 Pt II	Service reckonable on receipt of transfer value	
Sched 6 Pt III	Transfer payments between fire authorities	
Sched 6 Pt IV	Amount of transfer value	
Schedule 7: War service		
Sched 7 Pt I	War service elections	
Sched 7 Pt II	War service followed by fire service	
Sched 7 Pt III	Transferee's war service reckonable without receipt of transfer value	
Sched 7 Pt IV	Transferee's war service reckonable on receipt of transfer value	
Sched 7 Pt V	Supplementary provisions	
Sched 7 Pt VI	Payment of additional transfer values	

Schedule 8: Purchase of increased benefits		
Sched 8 Pt I	Payments	
Sched 8 Pt II	Calculation of appropriate amount	
Sched 8 Pt III	Increases by reference to appropriate amount	
Schedule 9: Appeals		
Sched 9 Pt I	Appeal to Board of Medical Referees	Cross-reference from the FCS to the FPS required.
Sched 9 Pt II	Appeal tribunals	Cross-reference from the FCS to the FPS required.
Schedule 10: Servicemen – increased awards		
Sched 10	Servicemen – increased awards	Remove Schedule 10 from the FPS. The FCS will require a similar rule.
Schedule 11: Special cases		
Sched 11 Pt I	Spouses' awards	
Sched 11 Pt II	Children's awards	
Sched 11 Pt III	Calculation of pensionable service where person ceased to serve before 1st May 1975	
Sched 11 Pt IV	Modification for persons serving on 10th July 1956	
Schedule 12: Transitional and other matters		
Sched 12	Transitional and other matters	FCS will require a cross-reference to the FPS.

Grey Book Provisions: Amendments Required for Firefighters' Compensation Scheme

Part 1: The compensation payment will be made in circumstances where there has been a qualifying injury as construed in accordance with the current FPS. The term "permanent incapacity" should therefore be replaced by "permanent disablement" and similarly construed. The intention is for payment to be made in circumstances where the person is unable to carry on any occupation and this should, therefore, be where death occurs or where the qualifying injury results in an earnings disablement of 100%.

Compensation should not be paid in circumstances where death or injury occurs during normal travel between home and a permanent or temporary place of work. However death or injury that occurs during travel as part of duty, for example where an officer on flexible duty is summoned to attend an incident direct from home or a firefighter on the retained duty system travels from home or elsewhere in response to his/her pager, is to be included.

Part 2: The term "qualified firefighter" should be replaced by "competent firefighter" where it occurs.

Reference to "permanent incapacity" should be replaced by "permanent disablement" as appropriate.

Part 5:

5(a) - Although the FPS currently does not provide survivor benefits for spouses or civil partners who live apart, this provision will need to be preserved for this rule.

5(b) - The FPS currently does not provide for unmarried cohabitees. This provision should be amended to be consistent with the provisions proposed for nominated partners in the new firefighters' pension scheme as follows:

The unmarried partner of the employee who, at the time of death, was living with the employee in an exclusive committed long-term relationship (at the discretion of the FRA, long-term in this context would normally mean for at least 2 years).

5(c) and (d) - The definitions for "child" and "adult dependant" should be amended to be construed as for the current FPS.

Firefighters' Pension Scheme Order 1992**Instructions for further amendments**

Part 1: Firefighters' Pension Scheme Order 1992: New Financing Arrangements		
Payment of employers and employees contributions towards pension liabilities.	<p>To set out that the Fire and Rescue Authority (FRA) shall make a contribution as a percentage of pensionable pay (as defined in Rule G1) towards the future pension liability for all serving members of the Firefighters Pension Scheme 1992 into their (the Authority's) pensions fund.</p> <p>To set out that the FRA shall pay the contribution, as a percentage of pensionable pay (as defined in Rules G1 and G2) towards the future pension liability of all members that had not made an election to leave the Firefighters Pension Scheme 1992 into their (the Authority's) pensions fund.</p> <p>Where (under Rule G3) a firefighter opts out of the scheme no further employer pension contributions will be due with effect from the start of the pay period following receipt of the election not to pay contributions.</p> <p>Where (under Rule B6) a firefighter leaves the scheme with entitlement to a refund, a refund of aggregate pension contributions, such a refund may be made from the proposed pension fund.</p> <p>Where a refund of aggregate pension contributions is made to the firefighter, a refund of the appropriate amount of employer's contributions from the proposed pension fund to the FRA's operating account will be made.</p>	

	<p>Where a firefighter opts out within 3 months of first joining the scheme under Rule G3 and there has not been a transfer of pension rights from some other pension scheme:</p> <ul style="list-style-type: none"> • the person will be treated as never having joined the scheme, and a refund of the employee's pension contributions will be made to the individual from the pension fund; and • a refund of the employer's pension contributions will be made to the FRA's operating account from the pension fund. <p>The arrangements for the payment of contributions by scheme members in Rule G2 are not being altered.</p>	
<p>Payment of contributions when an employee has been absent without pay</p>	<p>Rule F2(3) provides that the FRA which employs a person as a regular firefighter may resolve that he shall be entitled to reckon as pensionable service all or any period of absence from duty without pay and in that event the firefighter becomes liable to pay the authority the contributions that would have been payable for the reckonable period if he had been paid at his normal rate.</p> <p>This provision should be amended to remove the discretion from the FRA and give the scheme member the right to decide to pay contributions. The amended provision will need to make clear that the firefighter will be responsible for paying the contributions payable by the scheme member and the FRA; and that the contributions will be paid into the pension fund. The FRA should have a discretion to pay the employer's contribution.</p> <p>Unpaid contributions must be paid within 6 months of the agreement to repay them.</p>	

<p>Payment of ill health charges</p>	<p>To set out that from the 1st April <u>2005</u>, FRAs are required to make a payment as determined by the Secretary of State in Guidance into their pension fund for each employee who retires with an upper tier ill-health award under Rule B3 (as amended), in three annual instalments over a three year period, and a payment as determined by the Secretary of State in Guidance for each employee who retires with a lower tier ill-health award under Rule B3 (as amended) 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 Aprils of the following two years.</p> <p>When a higher tier award is cancelled following a review under Rule K1 (as amended) and a lower tier award is substituted the FRA will receive a refund in its operating account from the pension account on the difference between the higher tier ill-health charge and the lower tier ill health charge.</p> <p>When an award, whether a higher or a lower tier award, is cancelled and the former recipient does not resume active membership of the Firefighters' Pension Scheme, the FRA will make no further payments to the pension account.</p>	
<p>Authorities responsible for payment of awards</p>	<p>FRAs are responsible for paying firefighter pensions under Rule L1. Payments will be made from the pension fund maintained by the FRA.</p>	
<p>Receipt of Transfer Values</p>	<p>FRAs may accept a transfer value in respect of a person who takes employment with them as a regular firefighter under Rule F7. An amendment is required to provide that any payments received by the FRA should be paid into the pension fund.</p>	
<p>Transfers Payments between FRAs</p>	<p>Transfer payments are currently payable between FRAs under Rule F8 when a scheme member transfers to the employment of another FRA. From 1 April 2006, transfer payments between FRAs in England will no longer be paid. They will continue to be paid in respect of transfers between England and</p>	

	<p>Scotland and England and Wales. Transfer values will be paid out of the FRA's pension fund. Amendments will be required to reflect these changes.</p> <p>To set out that FRAs are required to receive into their pension fund any transfer values received from another pension scheme.</p>	
Payment of transfer values	<p>FRAs pay transfer values in respect of any member joining an approved pension scheme under Rule F9. Transfer values should be paid out of the FRA's pension fund.</p>	
Pension Fund	<p>L2. Each FRA shall maintain a separate pension fund showing all sums received or paid by them under or for the purposes of this Scheme, or in consequence of rights acquired and obligations incurred by them under the 1973 Scheme and previous Firemen's Pension Schemes.</p> <p>To set out that any deficit on the account should be met from the operating account of the FRA, and similarly any surplus should be carried to the operating account.</p> <p>To set out that, subject to the approval of Parliament, the Secretary of State shall, if he considers that the amounts received by a FRA (whether through employer or employee contributions or otherwise) in any year are unlikely to be sufficient to satisfy the payments they are obliged to make under the Pension Scheme, to pay them an amount in respect of the shortfall.</p> <p>Any amount paid by the Secretary of State under paragraph [x] shall not exceed the maximum calculated in accordance with [the calculation in the guidance issued by the Secretary of State on XX date].</p>	

	To set out that the Secretary of State will recoup any surpluses from FRAs if the amounts received by a FRA (whether through employer or employee contributions or otherwise) in any year are in excess of that needed to satisfy the payments they are obliged to make under the Pension Scheme, according to calculations set out in guidance issued by the Secretary of State on XX date].	
Reporting	To set out that the FRA shall provide reports and returns to the Secretary of State on payments into and out of their pension fund as required.	
Guidance	The Secretary of State will issue Guidance from time to time in respect of matters referred to in these Instructions	
Part 2: Firefighters' Pension Scheme Order 1992: Ill-health awards		
Introduction	<p>It is proposed that the provisions for determining a scheme members entitlement to an ill-health award under Rule B3 should be amended to keep the FPS 1992 in line with the arrangements which have been agreed for the NFPS 2006. This will avoid the risk of confusion amongst administrators and medical practitioners when dealing with members of the two schemes. Changes will also be necessary to the provisions in Rule K1 for review of ill-health awards.</p> <p>Any person who has been retired with an ill-health award prior to the new arrangements coming into operation will be unaffected by the changes; including the new arrangements for review of awards.</p>	
Rule B3: Ill-health	The single ill-health award will be replaced by two awards:	

<p>award</p>	<ul style="list-style-type: none"> • a lower tier pension calculated in a similar way to a deferred pension under Rule B5(1), i.e. without any enhancement of service but taking account of dual accrual, awarded where the scheme member is able to undertake other regular employment; or • a higher tier pension with an enhancement if the scheme member is unable to undertake other regular employment. This would be based on service already accrued in the scheme plus an enhancement. Two pension awards would be made: the first equal to a lower tier award that would have been paid at the date of retirement, and the second based on the amount of enhancement that would be awarded in accordance with Part III of Schedule 2 of the FPS Order 1992, less the first award. • A scheme member with less than 2 years service will continue to be entitled to an ill-health gratuity in accordance with Rule B3(2)(b). 	
<p>Rule K1: Review and cancellation of ill health pensions</p>	<p>As long as a person—</p> <ul style="list-style-type: none"> • is in receipt of an ill-health pension, and • has not reached state pension age, <p>the FRA shall consider, at such intervals as they in their discretion think proper whether he/she has become capable of:</p> <ul style="list-style-type: none"> • carrying out any duty appropriate to the role from which he/she was retired on ill health grounds; <p>and where a higher tier ill health pension was awarded</p> <ul style="list-style-type: none"> • whether he/she is fit to undertake other regular employment. <p>The FRA shall also review pensions paid where the person —</p> <ul style="list-style-type: none"> • is entitled to a deferred pension, and • has begun to receive payments in respect of the pension on becoming permanently disabled under B5. 	

	<p>Higher tier ill health pension - if the condition has improved so that the former scheme member could seek regular employment the enhanced pension would be cancelled and only the pension equal to a lower tier award will be substituted.</p> <p>Lower tier ill health pension – If the condition worsens there would be no provision for substituting the lower tier award with a higher tier one. Nor could a lower award be replaced by a higher one because of general deterioration in health. If the condition has improved to the point where the individual could return to a role as firefighter and the FRA re-employ him/her in that capacity the lower tier pension would be cancelled. If the individual refuses the job offered by the FRA, the pension would be cancelled and replaced by a deferred award under Rule B5.</p>	
Part 3: Firefighters' Pension Scheme Order 1992: Amendments consequential to new Tax Regime from 6 April 2006		
Rule B2: Short service award	Amendment required to Schedule 2 Part IV. The amount of the short service gratuity is the aggregate of pension contributions in all circumstances including for an ill-health gratuity.	Under FA2004, the amount of a short service lump sum can not exceed the aggregate of pension contributions.
Rule B6: Repayment of aggregate contributions	Amendment required to B6(1) to add “with less than 2 years’ pensionable service” after “authority” and before “otherwise”.	See above as for B2.
Rule B7: Commutation	Amendment required to B7(7) to substitute “2 months” for “6 months” . This will give sufficient opportunity for notice to the FRA.	Under FA2004, a commuted lump sum can be considered a pension commencement lump sum if it is paid within the period of 3 months

		beginning with the day on which the the member becomes entitled to it.
Rule B8: Commutation-small pensions	Amendment required to limit the amount of the gratuity payable under this rule. This could be by reference to Schedule 29, Part 1 of the Finance Act 2004 or state 1% of the Standard Lifetime Allowance.	FA2004 places an upper limit on the amount that may be commuted of 1% of the Standard Lifetime Allowance.
Rule B11: Deduction of tax from certain awards	Amendment required along the lines of “A fire and rescue authority may deduct from any payment which is chargeable to tax or subject to any recovery charge prescribed by the Finance Act 2004 the amount of tax charged or the recovery charge applicable.”	FA2004 requires scheme administrators to pass on tax charges by payover to HMRC and subsequent recovery from payments.
Rule C1: Spouse’s ordinary pension	Amendment required to delete paragraphs (3) to (6), and reference to them, to remove the option of a reduced pension and gratuity.	FA2004 does not provide for reduced pensions or lump sums in these circumstances.
Rule C6: Spouse’s requisite benefit and temporary pension	Amendment required to delete paragraph (5).	FA2004 does not provide for a lump sum (gratuity) in these circumstances.
Rule C7: Spouse’s award where no other	Amendment required to delete paragraph (2)(b) and the “and” at the end of paragraph (2)(a).	FA2004 does not provide for a lump sum (gratuity) in these circumstances.

Rule E1: Lump sum death grant	Amendment required to limit payment to those members who die in service before their 75 th birthday and to require FRA to make payment within 2 years of date of death.	FA2004 places limits on lump sum death benefits.
Rule E5: Gratuity in lieu of surviving spouse's pension	Similar to B8, the amount of gratuity in these circumstances is limited to not more than 1% of the standard lifetime allowance and, as it is lump sum death benefit, can only be paid where the member dies before their 75 th birthday and, in this case, for the payment to be made before the date the member would have reached their 75 th birthday. The limits could be specified in a new rule E7?	FA2004 places limitations on trivial commutation lump sum benefits.
Rule E6: Gratuity in lieu of child's allowance	The amount of gratuity in these circumstances is limited as for E5.	FA2004 places limitations on trivial commutation lump sum benefits.
Rule E7: Limitation on discretion to commute pension or allowance for gratuity	The current limitations in E7(3) and (4) to be replaced by the limitations in the FA2004 for trivial commutation of lump sum death benefits.	FA2004 places limitations on trivial commutation lump sum benefits.
Rule G1: Pensionable pay and average pensionable pay	Amend G1(2) to delete "for the purposes of section 594(2)..." to the end of the paragraph. Insert a new sentence "The "permitted maximum" is the Pension schemes earnings cap for 2005/2006 subject to any pensions increase." (NB: This is the phrase that is commonly used in the FPS. The cap will need to be advised in guidance. It is currently £105,600.00).	FA2004 removes the legal require for an earnings cap. However, the cap is to be remain in place for the current FPS.
Rule G7: Payment of periodical contributions for increased benefits	Delete G7(3).	FA2004 replaces the 15% cap on tax privileged pension contributions and permits contributions equivalent to the

		individuals relevant taxable UK earnings for the year.
Rule G9: Pension debit members: restriction on replacement of debited rights	Delete G9 in its entirety.	This restriction will not apply after 5 April 2006.
Rule L: Scheme administrator	New rule required to specify that FRAs must appoint a sub-scheme administrator.	FRAs will need to comply with the Registered Pensions (Splitting of Schemes) Regulations 2006.