

Scheme Manager Discretions



Firefighters' Pension Scheme and
Compensation Scheme Discretions

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Foreword

The regulations are written to determine that the scheme manager ‘may’ do certain things. There are, undoubtedly, differences of opinion as to what the meaning of the word ‘may’ means in any given context e.g. in some contexts it is permissive – signifying that there is a discretion to exercise – and in other contexts it is argued that the word ‘may’ essentially has the same meaning as ‘shall’.

This document makes no attempt to draw a distinction and, in recognition of the fact that there may be differences of opinion, merely lists all of the relevant regulations, in which there is a scheme manager obligation.

This document lists the scheme manager discretions (including those attached to an obligation) as contained in the relevant provisions as below:

- [The Firefighters’ Pension Scheme 1992](#)
- [The Firefighters’ Pension Scheme 2006](#)
- [The Firefighters’ Pension Scheme 2015](#)
- [The Firefighters’ Compensation Scheme](#)

Version Control

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Contents

Scheme Manager Discretions	1
Foreword	2
Version Control	3
1992 Scheme Discretions	
2006 Scheme Discretions	
2015 Scheme Discretions	
Compensation Scheme Discretions	
1992 Scheme Discretions	19
Part B: Personal Awards	19
1. Permission for a Chief Fire Officer, appointed on or before 1.7.2013, to retire before attaining age 55 (Rule B1(2)(b)).....	19
2. Discretion to determine that certain payments, not otherwise pensionable, should be treated as such for the credit of Additional Pension Benefit to the firefighter member. (Rule B5C)	19
3. Consent for one quarter pension to be commuted in the case of a firefighter who, upon retirement, would otherwise not be permitted to commute such portion of pension as would provide a greater lump sum than two and a quarter times the full amount of pension.. (Rule B7(5A)).....	19
4. Discretion to commute, for a “trivial commutation lump sum”, a small pension payable to a firefighter pensioner. (Rule B8)	20
5. A Scheme member may allocate a portion of pension for a dependant other than a spouse or civil partner. (Rule B9(2)(b)).....	20
6. Requirement for, and acceptance of, an opinion as to normal life expectancy for allocation purposes. (Rule B9(6))	20
7. Pension debit members. (Rule B12)	21
Part C: Awards on death – spouses and civil partners	21
8. Discretion to increase level of spouse's or civil partner's award for such period as the Fire and Rescue Authority think fit where the firefighter and spouse or civil partner were living separately at the date of death and where the normal level of benefit is reduced accordingly under the rules of the Firemen’s Pension Scheme Order 1992. (Rule C8(6)).....	21
9. Discretion to allow a gratuity to be paid, in whole or in part, to the surviving spouse or civil partner where it would otherwise not be payable because husband and wife, or civil partners, were living separately at the date of death. (Rule C8(7)).....	21
10. Discretion to reinstate all or part of a spouse's or civil partner's pension or gratuity for such period as the Fire and Rescue Authority think fit if, following termination of the pension or gratuity on marriage,	

remarriage, formation of a civil partnership or subsequent civil partnership, the other party to the subsequent marriage or civil partnership dies. (Rule C9)	22
Part D: Awards on death - children	22
11. Cessation of payment of a child's pension. (Rule D5(1)and (2))	22
12. Determination of entitlement to a child's allowance for a child aged 18 or over who was dependent on the deceased by reason of permanent disablement; review of that award, and the action taken if the Fire and Rescue Authority are satisfied that the child is no longer permanently disabled. (Rule D5(3) and (9)(c)).....	22
13. Discretion to withhold all or part of a child's pension, permanently or temporarily, where the child is convicted of manslaughter of the deceased. (Rule D5(5) to (8))	24
Part E: Awards on death – additional provisions	24
14. Discretion to make an award of dependent relative's gratuity to a dependent relative who is not entitled to any other award under the Firemen's Pension Scheme Order 1992 in respect of the same firefighter. (Rule E3) 24	24
15. Discretion to commute a spouse's or civil partner's pension, which is of limited amount, for a lump sum. (Rule E5 subject to limitations in Rule E7).....	24
16. Decision to commute a child's pension, which is of a limited amount, for a lump sum. (Rule E6 subject to limitations in Rule E7 and Schedule 5, Part III).....	25
17. Decision to substitute a higher amount of child's flat rate award where neither of the child's parents is alive. (Rule E9(6)).....	25
Part F: Pensionable service and transfer values	25
18. Discretion that the Fire and Rescue Authority should pay the employer's pension contributions (otherwise payable by the firefighter) due for a firefighters' period of absence without pay where the firefighter gives notice that he/she wishes to pay contributions in order that the period may count as pensionable service. (Rule F2(5))	25
19. Extension of 6-month time limit for election to pay certain sums in order that earlier pensionable service may count on rejoining the fire and rescue service. (Rule F4(3)(c))	26
20. Discretion to extend period in which a firefighter may make a payment to count as pensionable service a period during which an injury award was payable. (Rule F5(1))	26
21. Extension of 12-month time limit for acceptance of "mis-selling" transfer value payment. (Rule F6A(3)(b)).....	26
22. Discretion to adjust "mis-selling" transfer value to take account of any earlier service credit. (Rule F6A(6))27	27
23. Discretion to accept a transfer value. (Rule F7(1) subject to Rule F7(2) and (3)).....	27
24. Extension of 6 month time limit for a former firefighter, or serving firefighter who has opted out of the Firefighters' Pension Scheme 1992, to request payment of a transfer value to another pension scheme. (Rule F9(2)) 27	27

25. Extension of 12-month time limit after leaving in which a former firefighter must be subject to a new scheme if a transfer value based upon a returned refund of pension contributions or gratuity is to be permitted. (Rule F9(5))	27
Part G: Pensionable pay and contributions.....	28
26. Discretion to deduct pension contributions from instalments of pensionable pay. (Rule G2(2))	28
27. Discretion to extend 30-day time limit in which an election to pay contributions in respect of unpaid additional maternity, paternity or adoption leave must be made. (Rule G2A(3))	28
28. Discretion not to accept a firefighter's election to purchase increased benefits through the payment of additional contributions unless the firefighter has undergone a medical examination at his/her own expense and satisfied the Fire and Rescue Authority as to his/her good health. (Rule G6(4)).....	28
29. Discretion of Fire and Rescue Authority to agree to discontinuance of payment of periodical contributions for increased benefits where satisfied that payment is causing, or likely to cause, the firefighter financial hardship. (Rule G7(3))	28
Part H: Determination of questions and appeals	29
30. Discretion to extend the time limit for appeal against a Fire and Rescue Authority's decision based on a medical opinion. (Rule H2(4)(c)).....	29
31. Requirement to deal with a person's disagreement by Internal Dispute Resolution Procedure arrangements set up by the Fire and Rescue Authority in accordance with the requirements of section 50 of the Pensions Act 1995, where the disagreement is in respect of the Authority's determination under Rule H1 and the disagreement does not involve an issue of a medical nature. (Rule H3).....	29
Part IA: Pension credit members	29
32. Pension credit members. (Part IA).....	29
33. Discretion to commute a small pension due to a pension credit member. (Rule 1A2(1)).....	30
Part K: Revision and withdrawal of awards	30
34. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under age 60 and in receipt of an ill-health pension for less than 10 years has become capable of carrying out any duty appropriate to the role from which he/she retired on health grounds and, in the case of a higher tier ill-health pension, whether that person has become capable of undertaking regular employment. (Rule K1(1) and (2))	30
35. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under age 60 who is receiving early payment of a deferred pension on health grounds, has become capable of firefighting and performing any other duties appropriate to his/her former role as a firefighter. (Rule K1(3)) ..	30
36. Discretion to reduce the level of an ill-health pension to not less than half of the full amount where firefighter contributed to infirmity by own default. (Rule K3(1)).....	31
37. Discretion to withdraw the whole or part of a person's pension (other than a spouse's or civil partner's award under the Firefighters' Pension Scheme 1992) during any period of his/her re-employment in any capacity with a Fire and Rescue Authority. (Rule K4).....	31
38. Discretion to withdraw a pension in whole or in part, permanently or temporarily, on a person's conviction of certain offences. (Rule K5(1))	32

39.	Discretion to restore, at any time and to such extent as the Fire and Rescue Authority think fit, a pension withdrawn under Rule K5(1) to the pensioner or to apply it for the benefit of any dependant of the pensioner. (Rule K5(5))	32
Part L: Payments of awards and financial provisions		32
40.	Determination of intervals at which instalments of pension or allowance shall be paid. (Rule L3(1))	32
41.	Discretion to delay payment of an award to the extent necessary for determining any question as to the Fire and Rescue Authority's liability. (Rule L3(1))	33
42.	Discretion to decide an earlier payment date for survivors' benefits than the date prescribed (the first anniversary of the date of death) where the deceased received a gratuity or lump sum, and an option to pay a gratuity in instalments rather than as a single lump sum. (Rule L3(7) and (8))	33
43.	Repayment of aggregate pension contributions. (Rule L3(9))	33
44.	Payment of awards – minors. (Rule L5(1))	33
45.	Payment of awards – discretion as to recipient, or application, of payments due to a person incapable of managing his/her own affairs. (Rule L5(2))	34
46.	Payment of awards – discretion, following death of a person, as to recipient(s) of sums less than amount specified in the Administration of Estates (Small Payments) Act 1965. (Rule L5(3))	34
47.	Payment of awards – discretion to withhold sums due in respect of an award to a firefighter where there has been a loss to the funds of the Fire and Rescue Authority as a result of fraud, theft or negligence on the part of that person in connection with his/her employment. (Rule L5(6) to (9))	34
Schedule 6: Pensionable service and transfer values		35
48.	Discretion to deduct from an award any outstanding balance of payments in respect of previous service. (Schedule 6, Part 1, paragraph 1(4))	35
Schedule 9: Appeals		35
49.	Discretion to extend 28-day time limit in which a person must lodge any medical appeal, to a period not exceeding 6 months from the date of issue of the documents referred to in Rule H2(4) to that person, provided the Fire and Rescue Authority are of the opinion that the person's failure to lodge the appeal within 28 days was not due to his/her own default. (Schedule 9, Part I, paragraph 1(2))	35
50.	Discretion to decide the Fire and Rescue Authority's representation at a Medical Appeal Board interview. (Schedule 9, Part 1, paragraph 4(5))	35
51.	Discretion to decide whether or not to submit written evidence or a written statement to a Medical Appeal Board. (Schedule 9, Part 1, paragraph 5)	35
52.	Discretion, where Medical Appeal Board decides an appeal in favour of the Fire and Rescue Authority and reports that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded, to require the appellant to pay to the Authority such sum as the Authority think fit, not exceeding the total amount of fees and allowances payable to the Board as determined by the Secretary of State. (Schedule 9, Part 1, paragraph 8(2))	36
53.	A Fire and Rescue Authority's discretion to require the appellant to pay the Authority a sum not exceeding the total amount of fees and allowances payable to the Board, where the appellant withdraws an appeal or requests cancellation of, postponement of, or adjournment of the date appointed for an interview or	

medical examination by the Medical Appeal Board less than 22 working days before the appointed date, or the appellant's acts or omissions cause the Board to cancel, postpone or otherwise adjourn less than 22 working days before the appointed date. (Schedule 9, Part 1, paragraph 8(2A))36

2006 Scheme Discretions	38
Part 2: Scheme membership, cessation and retirement	38
54. Discretion to accept the status of “nominated partner” where the Scheme member and partner had been in a relationship for less than 2 years. (Rule 1(6) to (9)).....	38
Part 3: Personal awards	38
55. Pension on member-initiated early retirement. (Rule 5).....	38
56. Authority-initiated early retirement. (Rule 6).....	38
57. Discretion to determine that certain payments, not otherwise pensionable, should be treated as such for the credit of Additional Pension Benefit to the firefighter member. (Rule 7B).....	39
58. Discretion to commute a small pension to a trivial commutation lump sum. (Rule 10).....	39
59. Discretion to permit a firefighter to allocate a portion of pension for a dependant other than a spouse, civil partner, or nominated partner. (Rule 11, paragraphs 2(b) and 3).....	39
60. Requirement for, and acceptance of, an opinion as to normal life expectancy for allocation purposes. (Rule 11, paragraph 6(a)).....	39
61. Pension debit members. (Rule 12).....	40
Part 4: Survivors’ pensions	40
62. Discretion to withhold all or part of a survivor's pension, permanently or temporarily, where the deceased's spouse, civil partner, or nominated partner is convicted of manslaughter of the deceased. (Rule 1, paragraph 3).....	40
63. Discretion, subject to request of surviving spouse, civil partner or nominated partner of a firefighter member, to commute their pension to a trivial commutation lump sum. (Rule 5).....	40
64. Discretion to withhold all or part of a child's pension, permanently or temporarily, where the child is convicted of manslaughter of the deceased. (Rule 7, paragraph 5).....	41
65. Discretion, subject to consent of child’s remaining parent, guardian or the child (if not a minor) to commute a child’s pension to a trivial commutation lump sum. (Rule 12).....	41
Part 5: Awards on death	41
66. Discretion as to recipient of death grant and post-retirement death grant. (Rules 1 and 2).....	41
67. Discretion to pay part of any death grant not paid in full, to a person whose conviction for murder or manslaughter of the deceased has been quashed. (Rule 1, paragraph 12).....	41
Part 6: Pension sharing on divorce	42
68. Discretion, with the agreement of the pension credit member, to commute the whole of a pension credit pension to a trivial commutation lump sum. (Rule 2).....	42
69. Discretion to pay a post-retirement death grant in respect of a pension credit member to such person or persons as the Fire and Rescue Authority think fit. (Rule 5, paragraph 2).....	42
Part 8: Determination of questions and appeals	43

70. Discretion to extend time limit for an appeal against the Fire and Rescue Authority’s decision based on medical advice. (Rule 4, paragraph 4)	43
71. Requirement to deal with a person’s disagreement by Internal Dispute Resolution Procedure arrangements set up by a Fire and Rescue Authority in accordance with the requirements of section 50 of the Pensions Act 1995, where the disagreement is in respect of an Authority’s determination under Part 8, Rule 2 and the disagreement does not involve an issue of a medical nature. (Rule 5)	43
Part 9: Review, withdrawal and forfeiture of awards	44
72. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under State pensionable age and in receipt of an ill-health pension for less than 10 years has become capable of carrying out any duty appropriate to the role from which he/she retired on health grounds, and of undertaking regular employment. (Rule 1, paragraph 1).....	44
73. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under normal benefit age (65) who is in receipt of a deferred pension paid early on permanent disablement, has become capable of carrying out any duty appropriate to their former role, and of undertaking regular employment. (Rule 1, paragraph 2 and Rule 2).....	44
74. Discretion to withdraw the whole or part of a Part 3 (personal awards) pension for any period during which the person entitled to it is again employed as a firefighter, or in any other capacity, by any Fire and Rescue Authority. (Rule 3).....	44
75. Discretion to disallow early payment of a deferred pension under Part 3, Rule 3, paragraph 4 because of firefighter's dismissal from a Fire and Rescue Authority's employment. (Rule 4)	45
76. Discretion to withdraw pension in whole or in part, permanently or temporarily, on a person's conviction of certain offences. (Rule 5, paragraphs 1 to 3).....	45
77. Discretion, at any time and to such extent as a Fire and Rescue Authority think fit, to restore a pension withdrawn under Part 9, Rule 5, paragraphs 1 to 3, or to apply it for the benefit of any dependant of the pensioner. (Rule 5, paragraph 4)	45
78. Discretion to decide to what extent an award should be forfeited by a person who has been convicted of an offence under section 34(6) of the Fire and Rescue Services Act 2004 (acts or omissions for purposes of obtaining awards or other sums). (Rule 6)	46
Part 10: Qualifying service and pensionable service	46
79. Discretion for a Fire and Rescue Authority to pay the employer's pension contributions (otherwise payable by the firefighter) due for a firefighter's unpaid period of absence where the firefighter gives notice that he/she wishes to pay contributions in order that the period may count as pensionable service or special pensionable service. (Rule 4, paragraph 3)	46
Part 11: Pensionable pay, pension contributions and purchase of additional service	46
80. Discretion to deduct pension contributions from each instalment of pensionable pay as it becomes due (or by any other method of payment that may be agreed between a Fire and Rescue Authority and the member). (Rule 3, paragraph 2)	46
81. Discretion to extend the time limit in which an election to pay pension contributions in respect of unpaid additional maternity, paternity or adoption leave must be made. (Rule 4, paragraph 3).....	47

82.	Discretion to deduct contributions in respect of unpaid additional maternity, paternity or adoption leave from the death grant payable under Part 5 if a member or connected member dies without giving notice within the election time limit that he/she wishes to pay such contributions. (Rule 4, paragraphs 6 and 7)	47
83.	Discretion to allow a part-time regular firefighter to pay contributions at a part-time rate to purchase additional service. (Rule 5, paragraph 5).....	47
84.	Discretion to allow a retained or volunteer firefighter to purchase additional service by periodical contributions. (Rule 5, paragraph 6).....	48
85.	Purchase of service during the limited period. (Rule 5A)	48
86.	Discretion to agree to a firefighter member's request to discontinue payment of additional contributions to purchase service provided this is solely on the grounds of the member's financial circumstances, and decision as regards timing of recommencement of payment of additional contributions to purchase service where agreed with member that discontinuance should be no greater than 6 months. (Rule 8) 48	48
87.	The payment of contributions in respect of periods of unpaid service or absence, and discretion to extend the time limit in which the firefighter must pay. (Rule 9, paragraph 4(c))	48
Part 12: Transfers into and out of the scheme		49
88.	Discretion to charge member for third or subsequent statement of cash equivalent transfer value entitlement requested within any 12 month period. (Rule 3, paragraph 6).....	49
89.	Discretion to extend time limit in which a member, other than a special firefighter member, may apply for a transfer value payment from a non-occupational pension scheme. (Rule 9(1)(c)(ii)).....	49
90.	Discretion to accept a transfer value. (Rule 10, paragraph 1, subject to paragraphs 3 and 4 and Part 10, Rule 2, paragraphs 2 and 3).....	49
91.	Discretion to extend 12-month time limit for acceptance of a "mis-selling" transfer value payment. (Rule 14, paragraph 3)	49
92.	Discretion to adjust "mis-selling" transfer value to take account of any earlier service credit. (Rule 14, paragraph 6)	50
Part 14: Payment of awards		50
93.	Discretion to delay payment of an award to the extent necessary for determining any question as to a Fire and Rescue Authority's liability. (Rule 3, paragraph 2(a))	50
94.	Discretion to pay an award at other reasonable intervals if impracticable to pay at the standard monthly periods. (Rule 3, paragraph 2(b)).....	50
95.	Discretion to recover all or part of an overpayment following a pensioner's death of which a Fire and Rescue Authority were not informed (possibly by making an off-set against any other awards payable under the Firefighters' Pension Scheme 2006 in respect of the deceased). (Rule 3, paragraph 5).....	50
96.	Repayment of aggregate contributions. (Rule 3, paragraph 6).....	51
97.	Discretion as to recipient of any sum payable to a minor and directions as to application for the minor's benefit. (Rule 5, paragraph 1).....	51

98. Discretion as to recipient, or application, of payments due to a person incapable of managing his/her own affairs. (Rule 5, paragraph 2)51

99. Discretion, following the death of a person, as to recipient(s) of sums less than the amount specified in the Administration of Estates (Small Payments) Act 1965. (Rule 6, paragraph 1)51

100. Discretion to withhold sums due in respect of an award to a firefighter where there has been a loss to the funds of the Fire and Rescue Authority as a result of fraud, theft or negligence on the part of that person in connection with his/her employment. (Rule 6, paragraphs 4 to 7)52

Part 15: Miscellaneous provisions.....52

101. Discretion to require a person who is or may be entitled to a pension or a lump sum under the Firefighters’ Pension Scheme 2006 to provide a Fire and Rescue Authority with supporting evidence as to identity and to continuing entitlement to any payment under the Scheme, and discretion to withhold the whole or part of any amount due where a person fails to comply with this requirement. (Rule 3)52

102. Decision as to date of issue of annual benefit statements and relevant date for the pension illustration. (Rule 4).....52

Annex 2: Appeals to board of medical referees 53

103. Discretion to extend 28 day time limit, in which a person must lodge a medical appeal, to a period not exceeding 6 months. (paragraph 1(2))53

104. Discretion to decide the Fire and Rescue Authority's representative at Medical Appeal Board interview. (paragraph 6(5)).....53

105. Discretion to decide whether or not to submit written evidence or a written statement to Medical Appeal Board. (paragraph 7(1)).....53

106. Discretion, where Medical Appeal Board determines an appeal in favour of the Fire and Rescue Authority and states that, in its opinion, the appellant’s appeal was "frivolous, vexatious or manifestly ill-founded", to require the appellant to pay to the Fire and Rescue Authority such sum as the Authority think fit, not exceeding the total amount of fees and allowances payable by the Authority to the Board under Annex 2, paragraph 9(1). (paragraph 10(2)).....53

107. Discretion to require the appellant to pay to the Fire and Rescue Authority such sum as the Authority think fit, not exceeding the Medical Appeal Board's total amount of fees and allowances payable to the Board by the Authority under Annex 2, paragraph 9(1), in circumstances where the appellant gives notice to the Medical Appeal Board, withdrawing the appeal or requesting cancellation of, postponement of, or adjournment of, the date appointed for the medical examination less than 22 working days before the appointed date, or if the appellant’s acts or omissions cause the Board to cancel, postpone or otherwise adjourn less than 22 days before the appointed date. (paragraph 10(3))54

2015 Scheme Discretions	55
Power to Delegate	55
108. Delegation (Regulation 5).....	55
Opting Out	55
109. Opting into this scheme (Regulation 12).....	55
110. Opting out after the first three months (Regulation 16).....	55
Pensionable Pay	56
111. Pensionable pay (Regulation 17).....	56
Membership	56
112. Active membership (Regulation 19).....	56
Pension Accounts	56
113. Establishment of pension accounts: general (Regulation 28).....	56
114. Closure and re-establishment of active member's account (Regulation 37).....	56
115. Closure of deferred member's account after gap in pensionable service not exceeding five years. (Regulation 49)	57
Retirement Benefits	57
116. Employer initiated retirement (Regulation 62).....	57
117. Exercise of partial retirement option (Regulation 63).....	57
Ill-Health Benefits	57
118. Review of ill-health award or early payment of retirement pension (Regulation 68).....	58
119. Consequences of review (Regulation 69).....	59
120. Commencement of pensions (Regulation 70).....	59
Allocation	59
121. Allocation election (Regulation 72).....	59
122. Adjustment of allocated benefit (Regulation 75).....	59
Death Benefits	60
123. Meaning of "surviving partner" (Regulation 76).....	60
124. Person to whom lump sum death benefit payable (Regulation 95).....	60
125. Payment of pensions under Part 6 "Death Benefits" (Regulation 100).....	60
126. Surviving partner's pensions and eligible child's pensions: suspension and recovery (Regulation 101) ...	60
127. Provisional awards of eligible child's pensions: later adjustments (Regulation 102).....	61
128. Adjustment of benefits to comply with FA 2004 where members die over 75 (Regulation 104).....	61

Contributions.....	61
129. Member contributions (Regulation 110).....	61
130. Contributions during absence from work due to illness, injury, trade dispute or authorised absence (Regulation 111)	61
131. Deduction and payment of contributions (Regulation 114).....	62
Transfers.....	62
132. Statement of entitlement (Regulation 135)	62
133. Request for acceptance of a transfer payment (Regulation 141)	63
134. Transfer statement (Regulation 142)	63
135. Club transfer value statement (Regulation 144)	63
Appeals and determinations.....	63
136. Appeal concerning entries on the certificate (Regulation 148).....	63
137. Determinations by the scheme manager (Regulation 151)	63
138. Role of IQMP in determinations by the scheme manager (Regulation 152).....	63
139. Review of medical opinion (Regulation 153).....	64
140. Notice of appeal (Regulation 155).....	64
141. Reference of appeal to the board (Regulation 156 - See also Regulation 161)	65
142. Procedure where appeal to be pursued (Regulation 157)	65
143. Expenses of each party (Regulation 161)	65
144. Appeals on other issues (Regulation 163)	65
Payment of pensions.....	66
145. Commutation of small pensions (Regulation 167)	66
146. Payments for persons incapable of managing their affairs (Regulation 168)	66
147. Payments due in respect of deceased persons (Regulation 169).....	66
Forfeiture	67
148. Forfeiture: offences committed by members, surviving partners or eligible children (Regulation 171)...	67
149. Forfeiture of pensions: offences committed by other persons (Regulation 172)	67
150. Forfeiture of lump sum death benefit: offences committed by other persons (Regulation 173)	68
151. Forfeiture: relevant monetary obligations and relevant monetary losses (Regulation 174).....	68
152. Set-off (Regulation 175).....	68
Payment and Deduction of Tax.....	69
153. Payment on behalf of members of lifetime allowance charge (Regulation 178).....	69
154. Evidence of entitlement (Regulation 184).....	69

Added pension	69
155. Amount of accrued added pension may not exceed overall limit of extra pension (Schedule 1 Part 1, Paragraph 4)	69
156. Member’s election to make periodical contributions for added pension (Schedule 1 Part 1, Paragraph 7) 70	
157. Periodical payments (Schedule 1 Part 2, Paragraph 8)	70
158. Periodical payments during periods of assumed pensionable pay (Schedule 1 Part 2, Paragraph 10)	70
Tapered Protection	70
159. Meaning of "tapered protection closing date" (Schedule 2 Part 1, Paragraph 3).....	70

Compensation Scheme Discretions	71
Part 1: General provisions	71
160. Determining pensionable pay in certain cases (retained firefighters). (Rule 11, paragraphs (5) and (6))	71
Part 2: Injury awards and duty-related compensation	71
161. Discretion to reduce compensation for death or permanent incapacity while on duty if the firefighter's serious and culpable negligence or misconduct contributed to the circumstances in which the injury was sustained. (Rule 3, paragraph 6).....	71
162. Discretion to accept the status of an unmarried partner (other than a civil partner) where the firefighter and partner had been in a relationship for less than 2 years. (Rule 3, paragraph 10).....	71
163. Discretion to commute small compensatory pension for a lump sum. (Rule 4)	72
Part 3: Awards on death – Spouses and civil partners.....	72
164. Discretion to pay augmented award to spouse or civil partner where specific conditions of eligibility are not met. (Rule 2, paragraph 2 (b) and (c)).....	72
165. Discretion to increase, for such period as the Fire and Rescue Authority think fit, the level of spouse's or civil partner's special or augmented award where firefighter and spouse or civil partner were living apart at the date of death and the normal level of benefit is reduced under FCS rules. (Rule 4, paragraphs 6 and 7)	72
166. Discretion to reinstate all or part of a spouse's or civil partner's special or augmented award for such period as the Authority think fit following the termination of award on marriage, remarriage, formation of a civil partnership or subsequent civil partnership. (Rule 5, paragraphs 1 and 2).....	73
Part 4: Awards on death – Children.....	73
167. Decision to cease payment of a child's special allowance where the Fire and Rescue Authority are satisfied that the child is no longer permanently disabled or the child's pension should not have been awarded. (Rule 3, paragraph 5(c)).....	73
Part 5: Awards on death – Additional provisions	74
168. Discretion to award an adult dependent relative's special pension for such period(s) as the Fire and Rescue Authority may determine. (Rule 1)	74
169. Discretion to award a dependent relative's gratuity. (Rule 2, paragraph 3).....	74
170. Discretion, with the consent of the person entitled to the award, to commute for a lump sum a small pension awarded to a surviving spouse or civil partner. (Rule 3)	74
171. Discretion, with the consent of the child, surviving parent or guardian, to commute for a lump sum a small pension awarded to a child. (Rule 4).....	74
Part 6: Determination of questions and appeals.....	75
172. Requirement to reconsider, at person's request, his/her claim to an award where the Fire and Rescue Authority do not admit the claim at all, or do not admit it to its full extent. (Rule 3)	75

Part 7: Servicemen	75
173. Discretion to increase an award for a serviceman who, at the end of his/her forces period, is permanently disabled by a qualifying injury or injury received during his/her forces period. (Rule 2 and Rule 4)..	75
174. Discretion to increase dependants' benefits under the Firefighters' Pension Scheme 1992 to the level of a flat-rate award if a serviceman dies from the effects of an injury received during his/her forces period or a qualifying injury. (Rule 3 and Rule 4).....	76
Part 7A: Reservists	76
175. Discretion to increase an award to a reservist who is permanently disabled as a result of an injury received during his/her forces period or as a result of a qualifying injury. (Rules 2 and 4).....	76
176. Discretion to increase dependants' benefits if a reservist dies from the effects of an injury received during his/her forces period or a qualifying injury. (Rules 3 and 4).....	77
Part 8: Special cases	77
177. Discretion to pay an injury award to or in respect of an employee of a Fire and Rescue Authority who is not a firefighter but who has to retire, or dies, as a result of an injury received without his/her own default while in attendance at a fire in the execution of duties as an employee of the Authority. (Rule 1)	77
Part 9: Review, withdrawal and forfeiture of awards	78
178. Review of injury award – discretion to decide intervals at which a person's degree of disablement should be reviewed. (Rule 1, paragraph 1).....	78
179. Review of injury award – discretion, 5 years after an injury pension first becomes payable, to resolve that no further review of degree of disablement should take place. (Rule 1, paragraph 3)	78
180. Discretion to reduce the level of an injury award to not less than half of the full amount where a person, who is permanently disabled, contributed to the infirmity by his/her own default. (Rule 2)	79
181. Discretion to withdraw the whole or part of a person's pension (other than a spouse's or civil partner's award) during any period of re-employment as a firefighter with a Fire and Rescue Authority. (Rule 3).....	79
182. Discretion to withdraw a pension in whole or in part, permanently or temporarily, on a person's conviction of certain offences. (Rule 4, paragraphs 1 to 3).....	79
183. Discretion to restore at any time and to such extent as the Fire and Rescue Authority think fit, a pension withdrawn under Part 9, Rule 4, paragraphs 1 to 3, to the pensioner or to apply it for the benefit of any dependant of the pensioner. (Rule 4, paragraph 4)	79
184. Discretion to decide to what extent an award should be forfeited by a person who has been convicted of an offence under section 34(6) of the Fire and Rescue Services Act 2004 (acts or omissions for the purposes of obtaining awards or other sums). (Rule 5).....	80
Part 10: Payments of awards and financial provisions	80
185. Determination of intervals at which instalments of an injury pension or allowance should be paid. (Rule 2, paragraph 1)	80
186. Discretion to delay payment of an award to the extent necessary for determining any questions of the Fire and Rescue Authority's liability. (Rule 2, paragraph 1)	80

187. Discretion to pay a gratuity in instalments, rather than as a lump sum, of such reasonable amounts and over such reasonable period as the Fire and Rescue Authority think fit. (Rule 2, paragraph 7).....81

Schedule 5: Appeal to board of medical referees.....81

188. Discretion to extend the 14-day time limit in which a person must lodge a medical appeal, to a period not exceeding 6 months from the date of issue of the medical opinion to the person, provided the Fire and Rescue Authority are of the opinion that the person's failure to lodge the appeal within 14 days was not due to his/her own default. (paragraph 1(2)).....81

189. Discretion to decide the Fire and Rescue Authority's representation at Medical Appeal Board interview. (paragraph 5(5)).....81

190. Discretion to decide whether or not to submit written evidence or a written statement to Medical Appeal Board. (paragraph 6(1)81

191. Discretion, where Medical Appeal Board decide that a person's appeal was "frivolous, vexatious or manifestly ill-founded" to require the appellant to pay the Fire and Rescue Authority such sum as the Authority think fit, not exceeding the fees and allowances of the specialist member of the Board. (paragraph 9(2)).....82

192. Discretion, where appellant gives notice to the Medical Appeal Board, withdrawing the appeal within 21 working days before the date appointed for interview or medical examination, to require the appellant to pay such sum as the Fire and Rescue Authority think fit, not exceeding the Board's total fees and allowances. (paragraph 9(3)).....82

1992 Scheme Discretions

Part B: Personal Awards

1. Permission for a Chief Fire Officer, appointed on or before 1.7.2013, to retire before attaining age 55 (Rule B1(2)(b))

In the event that a Fire and Rescue Authority's Chief Fire Officer, appointed on or before 1.7.2013, should retire before attaining age 55, the Fire and Rescue Authority must decide whether or not to grant permission for the immediate payment of retirement benefits under Rule B1 of the Firemen's Pension Scheme Order 1992.

2. Discretion to determine that certain payments, not otherwise pensionable, should be treated as such for the credit of Additional Pension Benefit to the firefighter member. (Rule B5C)

The Fire and Rescue Authority have discretion to determine whether any Continual Professional Development payment or increase in pay for temporary promotion which comes into effect on or after 1 July 2013 should be treated as pensionable for the credit to the firefighter of Additional Pension Benefit.

(In accordance with Rule G1(9), where an allowance or supplement paid to a firefighter was being treated as pensionable before 1 July 2013 but is not pensionable pay within the meaning of Rule G1(1)(a), it should continue to be treated as pensionable for so long as the firefighter continues to receive it without any break in payment.)

3. Consent for one quarter pension to be commuted in the case of a firefighter who, upon retirement, would otherwise not be permitted to commute such portion of pension as would provide a greater lump sum than two and a quarter times the full amount of pension.. (Rule B7(5A))

In accordance with Rule B7(5A) of the Firemen's Pension Scheme Order 1992, before exercising their discretion in this respect, the Fire and Rescue Authority must have regard to the economical, effective and efficient management of their functions, and the costs to the Authority likely to be incurred in any particular case.

These costs will include a sum equal to the difference between the lump sum which the Scheme member wishes to receive and the lump sum payable in the absence of the Fire and Rescue's consent; such a sum would be transferrable to the Firefighters Pension Fund by the Authority in accordance with Rule LA2(10) of the Firemen's Pension Scheme Order 1992. There may also be tax charges to be paid by both the firefighter and the Authority which arise from permitting the greater lump sum to be paid.

4. Discretion to commute, for a "trivial commutation lump sum", a small pension payable to a firefighter pensioner. (Rule B8)

If the total amount of any pension(s) payable to a person – who has attained State pensionable age – under the provisions of the Firemen's Pension Scheme Order 1992, which together with any increase under the Pensions (Increase) Act 1971 and any pension credit pension under Rule 1A1 of the Order does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule), the Fire and Rescue Authority may, if it is considered appropriate, commute the pension(s) to a lump sum following the guidance of the Scheme Actuary.

5. A Scheme member may allocate a portion of pension for a dependant other than a spouse or civil partner. (Rule B9(2)(b))

Before giving consent to the allocation, it must be demonstrated to the satisfaction of the Fire and Rescue Authority that the nominee is a person substantially dependent on the member. There is no guidance in the Scheme Rules as to the method of demonstration and so the Authority must determine their own test.

6. Requirement for, and acceptance of, an opinion as to normal life expectancy for allocation purposes. (Rule B9(6))

If a member of the Firefighters' Pension Scheme 1992 wishes to allocate a portion of pension in favour of a beneficiary (a spouse, or civil partner or some other person that the Fire and Rescue Authority are satisfied is substantially dependent on the firefighter), that member must satisfy the Authority as to his/her normal life expectancy at the time of the request. There is no guidance in the Scheme Rules as to the method of demonstration and so the Authority must determine how this will be done, e.g. by an opinion from the member's GP, or from the Authority's Occupational Health Physician, or from an IQMP. In the absence of such an opinion, or if the opinion suggests limited life expectancy, the

Authority would refuse the request.

7. Pension debit members. (Rule B12)

The Fire and Rescue Authority must provide pension valuations and such information as may be required in relation to divorce or dissolution of civil partnership proceedings and take appropriate steps to record and administer Attachment Orders. In the event of a Pension Sharing Order, the Scheme member's pension rights will be apportioned in accordance with the directions of the Court, divorce/dissolution legislation, Rule B12 of the Firemen's Pension Scheme Order 1992, and factors prepared by the Scheme Actuary.

It is for the Authority to determine appropriate charges for this administration.

Part C: Awards on death – spouses and civil partners

8. Discretion to increase level of spouse's or civil partner's award for such period as the Fire and Rescue Authority think fit where the firefighter and spouse or civil partner were living separately at the date of death and where the normal level of benefit is reduced accordingly under the rules of the Firemen's Pension Scheme Order 1992. (Rule C8(6))

The Fire and Rescue Authority have discretion to permit the increase of a surviving spouse or civil partner's award where a benefit is reduced under the Firemen's Pension Scheme Order 1992 because the firefighter and spouse or civil partner were living separately at the date of death.

9. Discretion to allow a gratuity to be paid, in whole or in part, to the surviving spouse or civil partner where it would otherwise not be payable because husband and wife, or civil partners, were living separately at the date of death. (Rule C8(7))

The Fire and Rescue Authority have discretion to allow a gratuity to be paid in whole or in part to a surviving spouse or civil partner if the firefighter and spouse, or firefighter and civil partner, were living separately at the date of death.

10. Discretion to reinstate all or part of a spouse's or civil partner's pension or gratuity for such period as the Fire and Rescue Authority think fit if, following termination of the pension or gratuity on marriage, remarriage, formation of a civil partnership or subsequent civil partnership, the other party to the subsequent marriage or civil partnership dies. (Rule C9)

If an application for reinstatement of a pension or gratuity is made to the Fire and Rescue Authority from the surviving spouse or civil partner of a firefighter who, after the death of the firefighter, married or entered into a civil partnership and whose new spouse or civil partner has died or the subsequent marriage or civil partnership has been dissolved, the Authority has discretion to allow payment of the discontinued pension or gratuity to be reinstated. The Authority would have to decide what confirmatory evidence should be provided by the applicant, whether to allow the full award to be reinstated, and the date from which reinstatement payment should be made.

Part D: Awards on death - children

11. Cessation of payment of a child's pension. (Rule D5(1) and (2))

In accordance with Rule D5(1) and (2) of the Firemen's Pension Scheme Order 1992, the Fire and Rescue Authority shall cease paying a child's pension when the child ceases to be eligible upon attaining a particular age, or ceasing full-time education and entering paid employment, or upon marriage or forming a civil partnership.

12. Determination of entitlement to a child's allowance for a child aged 18 or over who was dependent on the deceased by reason of permanent disablement; review of that award, and the action taken if the Fire and Rescue Authority are satisfied that the child is no longer permanently disabled. (Rule D5(3) and (9)(c))

There is no direction here as to how the child's disablement should be established and so the Fire and Rescue Authority will have to determine an appropriate policy, e.g. an opinion from an IQMP. Their policy should also set out how and when the disablement should be reviewed.

The award will cease to be payable if the Authority are satisfied that the child is no longer permanently disabled and not entitled to a child's allowance under any other terms of eligibility.

13. Discretion to withhold all or part of a child's pension, permanently or temporarily, where the child is convicted of manslaughter of the deceased. (Rule D5(5) to (8))

The Fire and Rescue Authority may permanently withhold all of a child's pension where the child is convicted of the manslaughter of the deceased until and unless the conviction is quashed on appeal.

Part E: Awards on death – additional provisions

14. Discretion to make an award of dependent relative's gratuity to a dependent relative who is not entitled to any other award under the Firemen's Pension Scheme Order 1992 in respect of the same firefighter. (Rule E3)

Having regard to the conditions of Rule E3 of the Firemen's Pension Scheme Order 1992, the Fire and Rescue Authority can consider the payment of a dependent relative's gratuity to a dependent relative not entitled to any other award under the Firemen's Pension Scheme Order 1992 in respect of the same firefighter.

15. Discretion to commute a spouse's or civil partner's pension, which is of limited amount, for a lump sum. (Rule E5 subject to limitations in Rule E7)

If the total amount of any pension payable to a surviving spouse or civil partner under the provisions of the Firemen's Pension Scheme Order 1992, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (lump sum death benefit rules) or the "permitted amount" as defined in Rule E7(3), and

- (a) the deceased spouse or civil partner died before age 75, and
- (b) the Fire and Rescue Authority are satisfied that there are sufficient reasons, and
- (c) the surviving spouse or civil partner consents,

the Fire and Rescue Authority have discretion to commute the whole of the surviving spouse's or civil partner's pension for a lump sum in accordance with the guidance of the Scheme Actuary at the time when the pension first becomes payable.

16. *Decision to commute a child's pension, which is of a limited amount, for a lump sum. (Rule E6 subject to limitations in Rule E7 and Schedule 5, Part III)*

If the total amount of a child's allowance payable under the provisions of the Firemen's Pension Scheme Order 1992, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (trivial commutation lump sum death benefit rules) or the "permitted amount" as defined in Rule E7(3), and

(a) the deceased parent died before age 75, and

(b) the Fire and Rescue Authority are satisfied that there are sufficient reasons, and

(c) the surviving parent or the child's guardian or – if neither – the child him or herself consents,

the Fire and Rescue Authority have discretion to commute the pension for a lump sum in accordance with Schedule 5, Part III and factors prepared by the Scheme Actuary and current at the time when the commutation takes effect.

17. *Decision to substitute a higher amount of child's flat rate award where neither of the child's parents is alive. (Rule E9(6))*

In the exceptional circumstances that this issue should come up for consideration, the Fire and Rescue Authority have discretion to make such an award.

Part F: Pensionable service and transfer values

18. *Discretion that the Fire and Rescue Authority should pay the employer's pension contributions (otherwise payable by the firefighter) due for a firefighters' period of absence without pay where the firefighter gives notice that he/she wishes to pay contributions in order that the period may count as pensionable service. (Rule F2(5))*

If the firefighter has given notice under Rule F2(3) that he/she wishes to pay contributions in order that a period of unpaid leave may count as pensionable service, the Fire and Rescue Authority can use their discretion under Rule F2(5) to pay the employer's contributions otherwise payable by the firefighter in addition to member contributions in these circumstances.

19. Extension of 6-month time limit for election to pay certain sums in order that earlier pensionable service may count on rejoining the fire and rescue service. (Rule F4(3)(c))

The Fire and Rescue Authority have discretion to permit the extension of the 6-month time limit for an election to pay certain sums in order that earlier pensionable service may count upon a firefighter rejoining the fire and rescue service.

20. Discretion to extend period in which a firefighter may make a payment to count as pensionable service a period during which an injury award was payable. (Rule F5(1))

If a firefighter is entitled under Rule F5 to pay to the Fire and Rescue Authority the amount required in accordance with Schedule 6, Part I, paragraph 1 of the Firemen's Pension Scheme Order 1992 in respect of a period during which the firefighter was entitled to receive an injury pension, in order that it may count as pensionable service on re-employment, the Authority have discretion to extend the period in which the election to pay and payment must be made (within six months of resuming service).

21. Extension of 12-month time limit for acceptance of "mis-selling" transfer value payment. (Rule F6A(3)(b))

The Fire and Rescue Authority have discretion to permit the extension of the 12-month time limit for the acceptance of a "mis-selling" transfer value.

22. Discretion to adjust "mis-selling" transfer value to take account of any earlier service credit. (Rule F6A(6))

The Fire and Rescue Authority can use a discretion to adjust the amount of transfer value they accept under the "mis-selling" transfer rules to ensure that there is no duplication of pensionable service credited.

23. Discretion to accept a transfer value. (Rule F7(1) subject to Rule F7(2) and (3))

The Fire and Rescue Authority have a discretion to accept a transfer value from a firefighter's previous pension scheme but, with the passage of time, it is unlikely that anyone would now satisfy the requirement that the written request to the Authority should be made no later than 12 months after the date of taking up employment with the Authority.

24. Extension of 6 month time limit for a former firefighter, or serving firefighter who has opted out of the Firefighters' Pension Scheme 1992, to request payment of a transfer value to another pension scheme. (Rule F9(2))

If a former firefighter or a serving firefighter who has opted out of the Firefighters' Pension Scheme 1992 becomes subject to another pension scheme and requests that the Fire and Rescue Authority should pay a transfer value to that other scheme, the written request must be made within 6 months of becoming subject to the other scheme. However, the Authority have discretion to extend this time limit.

25. Extension of 12-month time limit after leaving in which a former firefighter must be subject to a new scheme if a transfer value based upon a returned refund of pension contributions or gratuity is to be permitted. (Rule F9(5))

If a former firefighter has received a refund of pension contributions or a gratuity under Part B of the Firemen's Pension Scheme Order 1992 and wishes to return the contributions/gratuity to reinstate pensionable service for the purposes of a transfer value to a new scheme, he/she must have become subject to that scheme within 12 months of ceasing to serve as a regular firefighter. The Fire and Rescue Authority have discretion to extend this 12-month time limit.

Part G: Pensionable pay and contributions

26. Discretion to deduct pension contributions from instalments of pensionable pay. (Rule G2(2))

Contributions are normally deducted from instalments of pay but the Fire and Rescue Authority have discretion to collect the contributions due by other means should the need arise.

27. Discretion to extend 30-day time limit in which an election to pay contributions in respect of unpaid additional maternity, paternity or adoption leave must be made. (Rule G2A(3))

The Fire and Rescue Authority have discretion to permit the extension of the 30-day time limit (counting from the day on which the person returns to work or, if he/she does not return to work, from the last day of employment with the Authority) for an election to pay contributions in respect of maternity, paternity or adoption leave which would not otherwise count as pensionable service.

28. Discretion not to accept a firefighter's election to purchase increased benefits through the payment of additional contributions unless the firefighter has undergone a medical examination at his/her own expense and satisfied the Fire and Rescue Authority as to his/her good health. (Rule G6(4))

If a firefighter member of the Firefighters' Pension Scheme 1992 wishes to purchase increased benefits through the payment of additional contributions, the Fire and Rescue Authority have discretion to require the person to satisfy them as to his/her normal life expectancy at the time of the request by undergoing a medical examination at his/her own expense. If the Fire and Rescue Authority use this discretion they will have to give consideration as to the provider of the medical opinion, e.g. the firefighter's GP, or the Authority's Occupational Health Physician, or from an IQMP.

29. Discretion of Fire and Rescue Authority to agree to discontinuance of payment of periodical contributions for increased benefits where satisfied that payment is causing, or likely to cause, the firefighter financial hardship.

(Rule G7(3))

If the Fire and Rescue Authority are satisfied that the payment of periodical contributions for increased benefits is causing, or likely to cause, the firefighter financial hardship they may give consent to the discontinuance of payment for such period as they think fit.

Part H: Determination of questions and appeals

30. Discretion to extend the time limit for appeal against a Fire and Rescue Authority's decision based on a medical opinion. (Rule H2(4)(c))

If a person, who wishes to appeal under Rule H2 of the Firemen's Pension Scheme Order 1992 against a decision based on a medical opinion, fails to submit the appeal notice and any supporting documents within the 28 days permitted for lodging such an appeal, the Fire and Rescue Authority have discretion to extend the 28 days.

31. Requirement to deal with a person's disagreement by Internal Dispute Resolution Procedure arrangements set up by the Fire and Rescue Authority in accordance with the requirements of section 50 of the Pensions Act 1995, where the disagreement is in respect of the Authority's determination under Rule H1 and the disagreement does not involve an issue of a medical nature. (Rule H3)

The Fire and Rescue Authority must apply the requirements of Rule H3 of the Firemen's Pension Scheme Order 1992 and Section 50 of the Pensions Act 1995 with two-stage Internal Dispute Resolution Procedures. However, they have discretion to decide who the Stage One and Stage Two decision makers will be.

Part IA: Pension credit members

32. Pension credit members. (Part IA)

The Fire and Rescue Authority shall provide pension valuations and such information as may be

required in relation to divorce or dissolution of civil partnership proceedings and will take appropriate steps to record and administer Attachment Orders. In the event of Pension Sharing Orders, the Scheme member's pension rights will be apportioned in accordance with the directions of the Court, divorce/dissolution legislation, Rule B12 of the Firemen's Pension Scheme Order 1992, and factors provided by the Scheme Actuary; a pension credit member's pension entitlement will be administered in accordance with Part 1A of the Order.

At the time that the pension credit pension becomes payable, the pension credit member will be informed of the commutation option and rights of appeal.

The Authority can determine the charges to be made for administration.

33. Discretion to commute a small pension due to a pension credit member.

(Rule 1A2(1))

If permissible under the Finance Act 2004 and Regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit: small pensions) the Fire and Rescue Authority may commute the whole of a small pension credit pension to a lump sum in accordance with the guidance of the Scheme Actuary.

Part K: Revision and withdrawal of awards

34. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under age 60 and in receipt of an ill-health pension for less than 10 years has become capable of carrying out any duty appropriate to the role from which he/she retired on health grounds and, in the case of a higher tier ill-health pension, whether that person has become capable of undertaking regular employment. (Rule K1(1) and (2))

Although there is a requirement to review entitlement to an ill-health pension in accordance with this Rule, the Fire and Rescue Authority can decide at what intervals the pension should be reviewed.

35. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under age 60 who is receiving early payment

of a deferred pension on health grounds, has become capable of firefighting and performing any other duties appropriate to his/her former role as a firefighter. (Rule K1(3))

Although there is a requirement to review entitlement to early payment of a deferred pension under this Rule, the Fire and Rescue Authority can decide at what intervals the pension should be reviewed.

36. *Discretion to reduce the level of an ill-health pension to not less than half of the full amount where firefighter contributed to infirmity by own default. (Rule K3(1))*

The Fire and Rescue Authority can consider using the powers contained in Rule K3 of the Firemen's Pension Scheme Order 1992 to reduce an ill-health award where the firefighter is permanently disabled and has brought about or contributed to the infirmity by his/her own default if they feel it appropriate according to the circumstances of any case which falls within the terms of Rule K3. The amount of the reduced pension would be increased to the level of a notional deferred pension when the person attains age 60.

37. *Discretion to withdraw the whole or part of a person's pension (other than a spouse's or civil partner's award under the Firefighters' Pension Scheme 1992) during any period of his/her re-employment in any capacity with a Fire and Rescue Authority. (Rule K4)*

The Fire and Rescue Authority have a discretion (which is expected to be exercised) to withdraw the whole or part of any pension (other than an award made to a spouse or civil partner) for any period during which the person entitled to it is employed by any Fire and Rescue Authority in any capacity. Fire pensioners are required to inform the Authority of any re-employment, in any capacity, by another Fire and Rescue Authority.

The extent to which the pension will be withdrawn will normally be based upon the terms of Rule K4 of the Firemen's Pension Scheme Order 1992, abatement principles set out in Firefighters' Pension Scheme Circular 10/2009, and in HM Treasury guidance, i.e. the pension due under the Firefighters' Pension Scheme 1992 plus remuneration from the new employment should not exceed the pensionable pay upon which the Firemen's Pension Scheme Order 1992 pension was calculated. To the extent that it does, so shall the pension be reduced for the duration of the employment.

Adjustments should be based upon cost of living increases to ensure equitable comparison.

Account should also be taken of the Authority's obligation under Rule LA2(9) of the Order which requires that a sum equivalent to the whole or part of pension not withdrawn must be paid into the Firefighters' Pension Fund by the Authority in the financial year in which a pension payment is made.

38. Discretion to withdraw a pension in whole or in part, permanently or temporarily, on a person's conviction of certain offences. (Rule K5(1))

The Fire and Rescue Authority have discretion to use powers contained in Rule K5 of the Firemen's Pension Scheme Order 1992 to withdraw a pension in whole or in part where a pensioner has been convicted of an offence (in the case of a spouse or civil partner this means an offence committed after the death of the member) if they feel it appropriate according to the circumstances of any case which falls within the terms of Rule K5 of the Order and subject to the certification of the Secretary of State where required.

The offences include those which are considered to have been gravely injurious to the interests of the State (including the offence of treason or an offence under the Official Secrets Acts 1911 to 1989) or liable to lead to serious loss of confidence in the public service.

39. Discretion to restore, at any time and to such extent as the Fire and Rescue Authority think fit, a pension withdrawn under Rule K5(1) to the pensioner or to apply it for the benefit of any dependant of the pensioner. (Rule K5(5))

If the Fire and Rescue Authority withdraw a pension under Rule K5(1) of the Firemen's Pension Scheme Order 1992, subject to the circumstances of the case they may at any time, and to such extent as they think fit, consider applying it for the benefit of any dependant of the pensioner or restoring it to the pensioner.

Part L: Payments of awards and financial provisions

40. Determination of intervals at which instalments of pension or allowance shall be paid. (Rule L3(1))

The Fire and Rescue Authority have discretion to determine the intervals at which instalments of pension or allowance should be paid.

(There is no longer a requirement to pay in advance.)

41. Discretion to delay payment of an award to the extent necessary for determining any question as to the Fire and Rescue Authority's liability. (Rule L3(1))

The Fire and Rescue Authority can use their discretion under Rule L3(1) of the Firemen's Pension Scheme Order 1992 to delay payment of an award to the extent necessary for determining any question as to their liability.

42. Discretion to decide an earlier payment date for survivors' benefits than the date prescribed (the first anniversary of the date of death) where the deceased received a gratuity or lump sum, and an option to pay a gratuity in instalments rather than as a single lump sum. (Rule L3(7) and (8))

The Fire and Rescue Authority have discretion to determine the payment date and discretion as to payment in the above circumstances.

43. Repayment of aggregate pension contributions. (Rule L3(9))

If a person is entitled under Rule B6 of the Firemen's Pension Scheme Order 1992 to the repayment of aggregate pension contributions, the Fire and Rescue Authority are not obliged to make the payment until one year from the date of the person's retirement unless the person makes an earlier request for payment or the Authority use their discretion to make an earlier payment.

44. Payment of awards - minors. (Rule L5(1))

The Fire and Rescue Authority may, at their discretion and as they think fit, pay a minor's pension to such other person as they may determine. They may give directions to that person as to the application of the pension for the minor's benefits.

45. Payment of awards – discretion as to recipient, or application, of payments due to a person incapable of managing his/her own affairs. (Rule L5(2))

If it appears to the Fire and Rescue Authority that a person entitled to the payment of an award is, by reason of mental disorder or otherwise, incapable of managing his/her affairs, the Authority may use their discretion to

- a) pay the benefits or any part of them to a person having care of the person entitled, or such other person as the Authority may determine, or
- b) apply the benefits in such manner as the Authority may determine for the benefit of the person entitled, or his/her dependants.

46. Payment of awards – discretion, following death of a person, as to recipient(s) of sums less than amount specified in the Administration of Estates (Small Payments) Act 1965. (Rule L5(3))

Upon the death of a person to whom there was due an award and before the award was paid, the Fire and Rescue Authority have discretion as to the recipient of the sum due if it is less than the amount specified in the Administration of Estates (Small Payments) Act 1965 (currently £5,000).

47. Payment of awards – discretion to withhold sums due in respect of an award to a firefighter where there has been a loss to the funds of the Fire and Rescue Authority as a result of fraud, theft or negligence on the part of that person in connection with his/her employment. (Rule L5(6) to (9))

If there has been a loss to the funds of the Fire and Rescue Authority as a result of fraud, theft, or negligence on the part of a regular firefighter in connection with his/her employment, the Authority can consider using the powers contained in Rule L5(6) of the Firemen's Pension Scheme Order 1992 to withhold all or part of any sums becoming due to him/her from the Authority in respect of a pension. The total amount withheld must not exceed the amount of the loss nor any part of a sum due that is not attributable to service as an employee of a Fire and Rescue Authority nor, where a sum is due in respect of a period beyond State pension age, any amount in respect of the secured portion of an ordinary, short service or ill-health pension. In the event of any dispute as to the amount of the loss, nothing may be withheld unless the loss has become recoverable from the person entitled to the

award under the order of a competent court. The Authority must provide the person entitled to the award with a certificate showing the amount withheld.

Schedule 6: Pensionable service and transfer values

48. Discretion to deduct from an award any outstanding balance of payments in respect of previous service. (Schedule 6, Part 1, paragraph 1(4))

In the event that any firefighter member still has payments in respect of previous service outstanding at the time of retirement, the Fire and Rescue Authority have discretion to deduct the outstanding amount from the payments of award made to him/her.

Schedule 9: Appeals

49. Discretion to extend 28-day time limit in which a person must lodge any medical appeal, to a period not exceeding 6 months from the date of issue of the documents referred to in Rule H2(4) to that person, provided the Fire and Rescue Authority are of the opinion that the person's failure to lodge the appeal within 28 days was not due to his/her own default. (Schedule 9, Part I, paragraph 1(2))

The Fire and Rescue Authority have discretion to extend the period for lodging a medical appeal, as outlined above.

50. Discretion to decide the Fire and Rescue Authority's representation at a Medical Appeal Board interview. (Schedule 9, Part 1, paragraph 4(5))

The Fire and Rescue Authority can decide their representation at a Medical Appeal Board interview.

51. Discretion to decide whether or not to submit written evidence or a written statement to a Medical Appeal Board. (Schedule 9, Part 1, paragraph 5)

The Fire and Rescue Authority can decide whether or not to submit written evidence or a written statement to a Medical Appeal Board.

52. Discretion, where Medical Appeal Board decides an appeal in favour of the Fire and Rescue Authority and reports that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded, to require the appellant to pay to the Authority such sum as the Authority think fit, not exceeding the total amount of fees and allowances payable to the Board as determined by the Secretary of State. (Schedule 9, Part 1, paragraph 8(2))

If the Medical Appeal Board decides an appeal in favour of the Fire and Rescue Authority and reports that in its opinion the appeal lodged by the appellant was frivolous, vexatious or manifestly ill-founded, the Authority have discretion to require the appellant to pay the Authority such sum as is equal to, but not greater than, the total amount of fees and allowances payable to the Board under Schedule 9, Part 1, paragraph 7(1) of the Firemen's Pension Scheme Order 1992 as determined by the Secretary of State.

53. A Fire and Rescue Authority's discretion to require the appellant to pay the Authority a sum not exceeding the total amount of fees and allowances payable to the Board, where the appellant withdraws an appeal or requests cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination by the Medical Appeal Board less than 22 working days before the appointed date, or the appellant's acts or omissions cause the Board to cancel, postpone or otherwise adjourn less than 22 working days before the appointed date. (Schedule 9, Part 1, paragraph 8(2A))

If the appellant withdraws an appeal or requests cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination by the Medical Appeal Board less than 22 working days before the appointed date, or if the appellant's acts or omissions cause the Board to

cancel, postpone or otherwise adjourn the date appointed under Schedule 9, Part 1, paragraph 4(2) of the Firemen's Pension Scheme Order 1992 for the interview less than 22 working days before the date so appointed, the Fire and Rescue Authority have discretion to require the appellant to pay the Authority such sum as is equal to, but not greater than, the total amount of fees and allowances payable to the Board.

2006 Scheme Discretions

Part 2: Scheme membership, cessation and retirement

54. Discretion to accept the status of “nominated partner” where the Scheme member and partner had been in a relationship for less than 2 years. (Rule 1(6) to (9))

Subject to the other requirements of nomination as set out in Part 2, Rule 1 of the Firefighters’ Pension Scheme (England) Order 2006 having been met, the Fire and Rescue Authority have discretion to accept a Scheme member’s nomination of a partner before their relationship has continued for a period of two years.

Part 3: Personal awards

55. Pension on member-initiated early retirement. (Rule 5)

If a firefighter member, other than a special firefighter member, satisfies an eligibility condition, is awarded a deferred pension, and at age 55 or over but before normal benefit age (65) requests early payment by giving written notice to the Fire and Rescue Authority, the Authority have discretion to refuse the request if the pension as reduced by the appropriate amount of actuarial reduction is likely to be less than the guaranteed minimum pension that would be payable from State pensionable age.

56. Authority-initiated early retirement. (Rule 6)

The Fire and Rescue Authority, having regard to the economical, effective and efficient management of their functions and the costs likely to be incurred in a particular case, can determine that a firefighter – other than a special firefighter member – who is at least age 55 but under normal retirement age (60) should be retired from the Authority’s employment with immediate payment of a pension calculated on the same principles as an ordinary pension under Part 3, Rule 1 of the Firefighter’s Pension Scheme (England) Order 2006.

If the Authority are considering making a determination under the comparable provision in the Firefighters’ Pension Scheme 2015, they must also consider making a determination under this provision.

57. Discretion to determine that certain payments, not otherwise pensionable, should be treated as such for the credit of Additional Pension Benefit to the firefighter member. (Rule 7B)

The Fire and Rescue Authority have discretion to determine that the benefits referred to in Rule 7B(5) can be treated as pensionable for the credit to the firefighter of Additional Pension Benefit.

(But note that in accordance with Part 11, Rule 1(6), where an allowance or supplement paid to a firefighter was being treated as pensionable before 1 July 2013 but is not pensionable pay within the meaning of Part 11, Rule 1(a), it shall continue to be treated as pensionable for so long as the firefighter continues to receive it without any break in payment.)

58. Discretion to commute a small pension to a trivial commutation lump sum. (Rule 10)

If the total amount of any pension(s) payable to a member who has attained State pensionable age, under Part 3 and, if relevant, under Part 6, Rule 1 (pension credit pension) of the Firefighters' Pension Scheme (England) Order 2006, together with any increase under the Pension (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule), the Fire and Rescue Authority can, if it is considered appropriate, commute the pension(s) to a lump sum in accordance with the guidance of the Scheme Actuary.

59. Discretion to permit a firefighter to allocate a portion of pension for a dependant other than a spouse, civil partner, or nominated partner. (Rule 11, paragraphs 2(b) and 3)

The Fire and Rescue Authority can withhold consent for the allocation of a portion of pension for a person other than the member's spouse, civil partner or nominated partner if they are not satisfied that the person is substantially dependent on the firefighter member.

60. Requirement for, and acceptance of, an opinion as to normal life expectancy for allocation purposes. (Rule 11, paragraph 6(a))

If a member of the Firefighters' Pension Scheme 2006 wishes to allocate a portion of pension in favour of a beneficiary, that member must satisfy the Fire and Rescue Authority as to his/her normal life expectancy at the time of the request. There is no detail of how this should be done, e.g. a medical opinion from the firefighters' GP, or the Occupational Health Physician or IQMP, and so the Authority must decide their policy as to the method of proof.

61. Pension debit members. (Rule 12)

The Fire and Rescue Authority must provide pension valuations and such information as may be required in relation to divorce or dissolution of civil partnership proceedings and will take appropriate steps to record and administer Attachment Orders. In the event of a Pension Sharing Order, the Scheme member's pension rights will be apportioned in accordance with the directions of the Court, divorce/dissolution legislation, Part 3, Rule 12 of the Firefighters' Pension Scheme (England) Order 2006, and the guidance and factors prepared by the Scheme Actuary.

The Authority may determine the charges to be made for administration.

Part 4: Survivors' pensions

62. Discretion to withhold all or part of a survivor's pension, permanently or temporarily, where the deceased's spouse, civil partner, or nominated partner is convicted of manslaughter of the deceased. (Rule 1, paragraph 3)

The Fire and Rescue Authority have discretion to permanently withhold all of a spouse's, civil partner's or nominated partner's pension where that person is convicted of the manslaughter of the deceased.

63. Discretion, subject to request of surviving spouse, civil partner or nominated partner of a firefighter member, to commute their pension to a trivial commutation lump sum. (Rule 5)

If the total amount of any pension payable to a surviving spouse, civil partner or nominated partner under the provisions of the Firefighters' Pension Scheme (England) Order 2006, does not exceed the commutation limit for the purposes of paragraph 20 of Schedule 29 to the Finance Act 2004 (lump sum death benefit) and if the recipient so requests, the Fire and Rescue Authority may commute the whole of the pension for a lump sum in accordance with factors prepared by the Scheme Actuary and

in force at the time when the commutation takes effect.

64. Discretion to withhold all or part of a child's pension, permanently or temporarily, where the child is convicted of manslaughter of the deceased. (Rule 7, paragraph 5)

The Fire and Rescue Authority may permanently withhold all or part of a child's pension, permanently or temporarily where the child is convicted of the manslaughter of the deceased.

65. Discretion, subject to consent of child's remaining parent, guardian or the child (if not a minor) to commute a child's pension to a trivial commutation lump sum. (Rule 12)

If the total amount of a child's allowance payable under the provisions of the Firefighters' Pension Scheme (England) Order 2006 does not exceed the commutation limit for the purposes of paragraph 20 of Schedule 29 to the Finance Act 2004 and

(a) the Fire and Rescue Authority are satisfied that there are sufficient reasons, and

(c) a surviving parent or the child's guardian or – if neither – the child (if not a minor) consents,

the Authority have discretion to commute the pension for a lump sum in accordance with the guidance of the Scheme Actuary at the time when the pension first becomes payable.

Part 5: Awards on death

66. Discretion as to recipient of death grant and post-retirement death grant. (Rules 1 and 2)

Upon the death of a firefighter member or pensioner member, the Fire and Rescue Authority may pay a death grant assessed in accordance with Part 5, Rules 1 and 2 of the Firefighters' Pension Scheme (England) Order 2006 to such person or persons as the Authority think fit, in accordance with Part 5, Rule 1, paragraph 10 of the Order.

67. Discretion to pay part of any death grant not paid in full, to a person whose

conviction for murder or manslaughter of the deceased has been quashed.

(Rule 1, paragraph 12)

If a person's conviction for murder or manslaughter is quashed on appeal the Authority may, if the death grant has not at that time been paid in full and having regard to the circumstances of the case, pay part of it to the person whose conviction has been quashed.

Part 6: Pension sharing on divorce

68. Discretion, with the agreement of the pension credit member, to commute the whole of a pension credit pension to a trivial commutation lump sum.

(Rule 2)

In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000, if the total amount of a pension credit pension payable under the provisions of the Firefighters' Pension Scheme (England) Order 2006 does not exceed the commutation limit for the purposes of paragraph 20 of Schedule 29 to the Finance Act 2004 and

- a) the Fire and Rescue Authority are satisfied that there are sufficient reasons, and
- b) the pension credit member consents,

the Authority can commute the pension for a lump sum calculated in accordance with factors provided by the Scheme Actuary current at the time of the commutation.

69. Discretion to pay a post-retirement death grant in respect of a pension credit member to such person or persons as the Fire and Rescue Authority think fit. (Rule 5, paragraph 2)

If a pension credit member dies within five years of their entitlement to a pension credit pension coming into payment and before their 75th birthday and there is a difference between

- the amount that is five times the pension, calculated at the annual rate effective on the day that it came into payment, and
- the instalments of pension that have been paid

the Fire and Rescue Authority can pay a post-retirement death grant of the amount of the difference to such person or persons as the Authority think fit.

Part 8: Determination of questions and appeals

70. Discretion to extend time limit for an appeal against the Fire and Rescue Authority's decision based on medical advice. (Rule 4, paragraph 4)

If a person who wishes to appeal under Part 8, Rule 4 of the Firefighters' Pension Scheme (England) Order 2006 against a decision based on medical advice, fails to submit the appeal notice and any supporting documents within the 28 days permitted for lodging such an appeal, the Fire and Rescue Authority has discretion to extend the 28 day time limit.

71. Requirement to deal with a person's disagreement by Internal Dispute Resolution Procedure arrangements set up by a Fire and Rescue Authority in accordance with the requirements of section 50 of the Pensions Act 1995, where the disagreement is in respect of an Authority's determination under Part 8, Rule 2 and the disagreement does not involve an issue of a medical nature. (Rule 5)

The Fire and Rescue Authority must apply the requirements of Part 8, Rule 5 of the Firefighters' Pension Scheme (England) Order 2006, with two-stage Internal Dispute Resolution Procedures in accordance with Section 50 of the Pensions Act 1995, and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous) Regulations 2008. However, the Authority may decide the administrative arrangements for compliance with these requirements, i.e. the Stage One and Stage Two decision makers.

Part 9: Review, withdrawal and forfeiture of awards

72. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under State pensionable age and in receipt of an ill-health pension for less than 10 years has become capable of carrying out any duty appropriate to the role from which he/she retired on health grounds, and of undertaking regular employment. (Rule 1, paragraph 1)

Although the review of ill-health awards is compulsory, the Fire and Rescue Authority can determine the timing of such reviews.

73. Requirement to decide, at such intervals as a Fire and Rescue Authority think proper, whether a person under normal benefit age (65) who is in receipt of a deferred pension paid early on permanent disablement, has become capable of carrying out any duty appropriate to their former role, and of undertaking regular employment. (Rule 1, paragraph 2 and Rule 2)

Although the review of early payment of deferred pension on health grounds is compulsory, the Fire and Rescue Authority can determine the timing of such reviews.

74. Discretion to withdraw the whole or part of a Part 3 (personal awards) pension for any period during which the person entitled to it is again employed as a firefighter, or in any other capacity, by any Fire and Rescue Authority. (Rule 3)

The withdrawal of pension on re-employment is at the discretion of the Fire and Rescue Authority, however an Authority will normally have regard to the terms of Part 9, Rule 3, to the abatement principles set out in Firefighters' Pension Scheme Circular 10/2009, and to HM Treasury guidance, i.e. the pension due under the Firefighters' Pension Scheme 2006 plus remuneration from the new employment should not exceed the pensionable pay upon which the Firefighters' Pension Scheme 2006 pension was calculated (taking account of cost-of-living increases). To the extent that it does,

so shall the Firefighters' Pension Scheme 2006 pension be reduced for the duration of the employment.

Account must also be taken of the Authority's obligation under Part 13, Rule 2, paragraph 11 of the Firefighters' Pension Scheme (England) Order 2006 which requires that a sum equivalent to the whole or part of pension not abated or withdrawn must be paid into the Firefighters' Pension Fund by the Authority in the financial year in which pension payment is made.

75. Discretion to disallow early payment of a deferred pension under Part 3, Rule 3, paragraph 4 because of firefighter's dismissal from a Fire and Rescue Authority's employment. (Rule 4)

The Fire and Rescue Authority have discretion to disallow payment of a deferred pension before age 65, or before age 60 in the case of a special retained member, to a firefighter who is dismissed from the Authority's employment if this is felt to be appropriate in a particular case.

The reason for "dismissal" is not mentioned. The Authority may wish to consider a difference in treatment between dismissal because of an offence and dismissal because of medical capability (where the person would not be entitled to an ill-health award).

76. Discretion to withdraw pension in whole or in part, permanently or temporarily, on a person's conviction of certain offences. (Rule 5, paragraphs 1 to 3)

The Fire and Rescue Authority have discretion to use the powers contained in Part 9, Rule 5, paragraphs 1 to 3 of the Firefighters' Pension Scheme (England) Order 2006 to withdraw a pension in whole or in part, permanently or temporarily where a pensioner has been convicted of an offence if the Authority decide it would be appropriate according to the circumstances of any case which falls within the terms of Part 9, Rule 5 of the Order and subject to the certification of the Secretary of State where required.

77. Discretion, at any time and to such extent as a Fire and Rescue Authority think fit, to restore a pension withdrawn under Part 9, Rule 5, paragraphs 1 to 3, or to apply it for the benefit of any dependant of the pensioner. (Rule 5, paragraph 4)

If the Fire and Rescue Authority withdraw a pension under Part 9, Rule 5, paragraphs 1 to 3 of the Firefighters' Pension Scheme (England) Order 2006, subject to the circumstances of the case they may consider applying it for the benefit of any dependant of the pensioner or restoring it to the pensioner.

78. Discretion to decide to what extent an award should be forfeited by a person who has been convicted of an offence under section 34(6) of the Fire and Rescue Services Act 2004 (acts or omissions for purposes of obtaining awards or other sums). (Rule 6)

If a person has been convicted of an offence under section 34(6) of the Fire and Rescue Services Act 2004 (acts or omissions for purposes of obtaining awards or other sums) the Fire and Rescue Authority have discretion to require such amount of the pension to be forfeited as they think appropriate to the circumstances of the case.

Part 10: Qualifying service and pensionable service

79. Discretion for a Fire and Rescue Authority to pay the employer's pension contributions (otherwise payable by the firefighter) due for a firefighter's unpaid period of absence where the firefighter gives notice that he/she wishes to pay contributions in order that the period may count as pensionable service or special pensionable service. (Rule 4, paragraph 3)

The Fire and Rescue Authority have discretion to meet the cost of employer's contributions during a period of unpaid leave.

Part 11: Pensionable pay, pension contributions and purchase of additional service

80. Discretion to deduct pension contributions from each instalment of pensionable pay as it becomes due (or by any other method of payment that

may be agreed between a Fire and Rescue Authority and the member). (Rule 3, paragraph 2)

Contributions are normally deducted from instalments of pay but the Fire and Rescue Authority have discretion to collect the contributions due by other means should the need arise.

81. Discretion to extend the time limit in which an election to pay pension contributions in respect of unpaid additional maternity, paternity or adoption leave must be made. (Rule 4, paragraph 3)

The Fire and Rescue Authority have discretion to permit an extension to the 30-day time limit for an election to pay contributions in respect of unpaid maternity, paternity or adoption leave which would not otherwise count as pensionable service or special pensionable service.

82. Discretion to deduct contributions in respect of unpaid additional maternity, paternity or adoption leave from the death grant payable under Part 5 if a member or connected member dies without giving notice within the election time limit that he/she wishes to pay such contributions. (Rule 4, paragraphs 6 and 7)

If a firefighter member would have had the option to pay contributions in order to reckon as pensionable service or special pensionable service a period of maternity, paternity or adoption leave but dies within the time limits for making such an election without having made it, he/she shall be deemed to have given the notice and the Fire and Rescue Authority must give the firefighter's personal representatives a statement of the contributions due, and may collect the contributions from the death grant payable under Part 5 of the Firefighters' Pension Scheme (England) Order 2006.

83. Discretion to allow a part-time regular firefighter to pay contributions at a part-time rate to purchase additional service. (Rule 5, paragraph 5)

If a part-time regular firefighter member wishes to purchase additional service by periodical contributions the Fire and Rescue Authority have discretion to allow them to pay the additional contributions at a part-time rate.

84. Discretion to allow a retained or volunteer firefighter to purchase additional service by periodical contributions. (Rule 5, paragraph 6)

If a retained or volunteer firefighter member wishes to purchase additional service by periodical contributions the Fire and Rescue Authority have discretion to permit this, in which case the contributions are based on the firefighter's reference pay.

85. Purchase of service during the limited period. (Rule 5A)

Discretions for estimation of service for duration of special retained firefighter exercise only.

86. Discretion to agree to a firefighter member's request to discontinue payment of additional contributions to purchase service provided this is solely on the grounds of the member's financial circumstances, and decision as regards timing of recommencement of payment of additional contributions to purchase service where agreed with member that discontinuance should be no greater than 6 months. (Rule 8)

If it is felt to be appropriate in a particular case, the Fire and Rescue Authority have discretion to agree to discontinue the making of deductions of additional contributions to purchase service from the pay of a firefighter member, where the firefighter's request is made solely on the grounds of his/her financial circumstances.

87. The payment of contributions in respect of periods of unpaid service or absence, and discretion to extend the time limit in which the firefighter must pay. (Rule 9, paragraph 4(c))

If a firefighter member who elected to pay additional contributions to "purchase" additional service has a period of unpaid service or unpaid leave (i.e. maternity, paternity, adoption leave or other absence without pay) and consequently there is no pay from which the additional contributions can be deducted, he/she can apply to the Fire and Rescue Authority to pay the contributions. The application must be made no later than one month after the end of the period of unpaid absence.

The additional contributions may be paid directly to the Authority during the unpaid leave, or collected within 6 months of the firefighter's return to duty after the absence. The Authority have discretion to extend this time limit.

Part 12: Transfers into and out of the scheme

88. Discretion to charge member for third or subsequent statement of cash equivalent transfer value entitlement requested within any 12 month period. (Rule 3, paragraph 6)

Where, in any period of twelve consecutive months, a member has made and not withdrawn two applications for a statement of transfer value entitlement, the Fire and Rescue Authority have discretion not to supply a third or subsequent statement during that twelve-month period unless the applicant pays such fee as the Authority may reasonably require.

89. Discretion to extend time limit in which a member, other than a special firefighter member, may apply for a transfer value payment from a non-occupational pension scheme. (Rule 9(1)(c)(ii))

The Fire and Rescue Authority have discretion to accept a Scheme member's application for a transfer value payment from a non-occupational pension scheme where the application is made more than one year after the member first became eligible to be a firefighter member.

90. Discretion to accept a transfer value. (Rule 10, paragraph 1, subject to paragraphs 3 and 4 and Part 10, Rule 2, paragraphs 2 and 3)

The Fire and Rescue Authority have discretion to accept a transfer value payment into the Firefighters' Pension Scheme 2006 where the Scheme member has made an application under Part 10 Rule 8.

91. Discretion to extend 12-month time limit for acceptance of a "mis-selling" transfer value payment. (Rule 14, paragraph 3)

The Fire and Rescue Authority have discretion to permit the extension of the 12-month time limit for

the acceptance of a “mis-selling” transfer value.

92. Discretion to adjust "mis-selling" transfer value to take account of any earlier service credit. (Rule 14, paragraph 6)

The Fire and Rescue Authority have discretion to adjust the amount of transfer value they accept under the “mis-selling” transfer rules to ensure that there is no duplication of pensionable service credited.

Part 14: Payment of awards

93. Discretion to delay payment of an award to the extent necessary for determining any question as to a Fire and Rescue Authority's liability. (Rule 3, paragraph 2(a))

The Fire and Rescue Authority have discretion to delay payment of an award to the extent necessary for determining any question as to the Authority's liability.

94. Discretion to pay an award at other reasonable intervals if impracticable to pay at the standard monthly periods. (Rule 3, paragraph 2(b))

In accordance with Part 14, Rule 3, paragraph 1, if the Fire and Rescue Authority are of the opinion that, by reason of the amount of the award it would be impracticable to make payments monthly in arrears, they may exercise their discretion to discharge their liability in respect of it by making payments at such reasonable intervals as they think fit.

95. Discretion to recover all or part of an overpayment following a pensioner's death of which a Fire and Rescue Authority were not informed (possibly by making an off-set against any other awards payable under the Firefighters' Pension Scheme 2006 in respect of the deceased). (Rule 3, paragraph 5)

Where the Fire and Rescue Authority are not informed of the death of a pensioner and, as a result, the pension has continued in payment, the Authority have discretion to recover all or part of the

overpayment as they think fit and may recover it by off-set against any other award payable under the Firefighters' Pension Scheme (England) Order 2006 in respect of the deceased.

96. Repayment of aggregate contributions. (Rule 3, paragraph 6)

If a person is entitled under Part 3, Rule 8 of the Firefighters' Pension Scheme (England) Order 2006 to the repayment of aggregate pension contributions, the Fire and Rescue Authority are not obliged to make the payment until the expiration of a year from the date of retirement if the person does not make an earlier request for payment. They may wish to make a policy statement regarding this option.

97. Discretion as to recipient of any sum payable to a minor and directions as to application for the minor's benefit. (Rule 5, paragraph 1)

Where children's benefits are payable, the Fire and Rescue Authority have discretion as to the recipient and may give directions regarding the application of the payments for a child's benefit.

98. Discretion as to recipient, or application, of payments due to a person incapable of managing his/her own affairs. (Rule 5, paragraph 2)

If it appears to the Fire and Rescue Authority that a person entitled to the payment of an award is, by reason of mental disorder or otherwise, incapable of managing his/her affairs, the Authority may

- a) pay benefits or any part of them to a person having the care of the person entitled, or such other person as the Authority may determine, or
- b) apply the benefits in such manner as the Authority may determine for the benefit of the person entitled, or his/her dependants.

99. Discretion, following the death of a person, as to recipient(s) of sums less than the amount specified in the Administration of Estates (Small Payments) Act 1965. (Rule 6, paragraph 1)

Upon the death of a person to whom there was due, in respect of an award, a sum not exceeding (currently) £5,000, the Fire and Rescue Authority may pay the sum due to the person or persons as

the Authority think fit without requiring production of Grant of Probate or any other proof of entitlement.

100. Discretion to withhold sums due in respect of an award to a firefighter where there has been a loss to the funds of the Fire and Rescue Authority as a result of fraud, theft or negligence on the part of that person in connection with his/her employment. (Rule 6, paragraphs 4 to 7)

If there has been a loss to the funds of the Fire and Rescue Authority as a result of fraud, theft, or negligence on the part of a firefighter in connection with his/her employment, the Authority can consider using the powers contained in Part 14, Rule 6 of the Firefighters' Pension Scheme (England) Order 2006 to withhold all or part of any sums becoming due to him/her from the Authority in respect of an award. The total amount withheld must not exceed the amount of the loss nor any part of a sum due that is not attributable to service as an employee of a Fire and Rescue Authority. In the event of any dispute as to the amount of the loss, nothing must be withheld unless the loss has become recoverable from the person entitled to the award under the order of a competent court. The Authority must provide the person entitled to the award with a certificate showing the amount withheld.

Part 15: Miscellaneous provisions

101. Discretion to require a person who is or may be entitled to a pension or a lump sum under the Firefighters' Pension Scheme 2006 to provide a Fire and Rescue Authority with supporting evidence as to identity and to continuing entitlement to any payment under the Scheme, and discretion to withhold the whole or part of any amount due where a person fails to comply with this requirement. (Rule 3)

The Fire and Rescue Authority can require all persons in receipt of a pension or potentially entitled to a pension or lump sum under the Firefighters' Pension Scheme 2006 to provide supporting evidence from time to time as to identity and entitlement to payment under the Scheme. If a person fails to comply with this requirement, according to the circumstances of the case, the Authority can exercise their discretion to withhold the whole payment.

102. Decision as to date of issue of annual benefit statements and relevant date

for the pension illustration. (Rule 4)

The Fire and Rescue Authority can determine the timing of the issue of annual benefit statements. The Authority may also decide the relevant date for the pension illustration (except in the case of pension credit members).

Annex 2: Appeals to board of medical referees

103. Discretion to extend 28 day time limit, in which a person must lodge a medical appeal, to a period not exceeding 6 months. (paragraph 1(2))

The Fire and Rescue Authority has discretion to permit the extension of the 28-day time limit in which a person must lodge a medical appeal, to a period not exceeding 6 months from the date of issue of the documents under Part 8, Rule 4, paragraph 4 of the Firefighters' Pension Scheme (England) Order 2006.

104. Discretion to decide the Fire and Rescue Authority's representative at Medical Appeal Board interview. (paragraph 6(5))

The Fire and Rescue Authority can decide who should represent the Authority at a Medical Appeal Board interview.

105. Discretion to decide whether or not to submit written evidence or a written statement to Medical Appeal Board. (paragraph 7(1))

The Fire and Rescue Authority can decide whether or not to submit written evidence or a written statement to a Medical Appeal Board.

106. Discretion, where Medical Appeal Board determines an appeal in favour of the Fire and Rescue Authority and states that, in its opinion, the appellant's appeal was "frivolous, vexatious or manifestly ill-founded", to require the appellant to pay to the Fire and Rescue Authority such sum as the Authority think fit, not exceeding the total amount of fees and allowances payable by the

Authority to the Board under Annex 2, paragraph 9(1). (paragraph 10(2))

If the Medical Appeal Board decides an appeal in favour of the Fire and Rescue Authority and reports that in its opinion the appeal lodged by the appellant was frivolous, vexatious or manifestly ill-founded, the Authority can require the appellant to pay the Authority such sum as is equal to, but not greater than, the total amount of fees and allowances payable to the Board as determined by the Secretary of State. (See requirement to inform person of this possibility under Annex 2, paragraph 4(5)(i))

107. Discretion to require the appellant to pay to the Fire and Rescue Authority such sum as the Authority think fit, not exceeding the Medical Appeal Board's total amount of fees and allowances payable to the Board by the Authority under Annex 2, paragraph 9(1), in circumstances where the appellant gives notice to the Medical Appeal Board, withdrawing the appeal or requesting cancellation of, postponement of, or adjournment of, the date appointed for the medical examination less than 22 working days before the appointed date, or if the appellant's acts or omissions cause the Board to cancel, postpone or otherwise adjourn less than 22 days before the appointed date. (paragraph 10(3))

If the appellant withdraws an appeal or requests cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination by the Medical Appeal Board less than 22 working days before the appointed date, or if the appellant's acts or omissions cause the Board to cancel, postpone or otherwise adjourn the date appointed, the Fire and Rescue Authority has discretion to require the appellant to pay the Authority such sum as is equal to, but not greater than, the total amount of fees and allowances payable to the Board under Annex 2, paragraph 9(1) of the Firefighters' Pension Scheme (England) Order 2006.

2015 Scheme Discretions

Power to Delegate

108. Delegation (Regulation 5)

The scheme manager (the Fire and Rescue Authority) may delegate any of their functions including the power to delegate to such persons or employees of such person as may be authorised in that behalf by the scheme manager.

The Local Pensions Board should ensure that delegated powers are appropriate and current.
[Regulation 5(2)]

Opting Out

109. Opting into this scheme (Regulation 12)

An optant-in will become an active member of the scheme with effect from the beginning of the first pay period following the date on which the option is exercised. There is an option for the scheme manager to vary the date on which the person becomes an active member, to such other time as the scheme manager considers appropriate. [Regulation 12(5)]

110. Opting out after the first three months (Regulation 16)

An optant-out ceases to be in pensionable service with effect from the first day of the first pay period following the date on which the option is exercised. If the scheme manager considers that day to be inappropriate, it may vary the date to the first day of any later pay period as the scheme manager does consider appropriate. [Regulation 16(2)(b)]

Pensionable Pay

111. Pensionable pay (Regulation 17)

The scheme manager has discretion to determine if continual professional development payments are to be treated as pensionable pay. [Regulation 17(1)(d)]

As confirmed in the email sent on 3rd July 2015, available on following [link](#) on the khub, this discretion does not over-rule the NJC collective agreement that CPD should be pensionable, it just allows for a change in the employer position in the future.

Membership

112. Active membership (Regulation 19)

A person who is on unpaid authorised absence can count the period as active membership if the scheme manager permits them to be treated as an active member during that period. (Presumably this would be linked to Regulation 111(4) and subject to the member paying the appropriate contributions.) [Regulation 19(c)]

Pension Accounts

113. Establishment of pension accounts: general (Regulation 28)

The scheme manager must establish and maintain pension accounts for scheme members, but they may be kept in such form as the scheme manager considers appropriate. [Regulation 28(2)]

114. Closure and re-establishment of active member's account (Regulation 37)

If a member has more than two active member's account and ceases pensionable service with less than three months' qualifying service in respect of one account, that account must be closed and benefits aggregated with one of the others; the member may select which one. If the member fails to choose, the

scheme manager has discretion to choose. [Regulation 37(3), (4) and(5)]

115. Closure of deferred member's account after gap in pensionable service not exceeding five years. (Regulation 49)

If a deferred member re-enters pensionable employment after a gap of five years or less, the scheme manager must close the deferred member's account and re-establish the active member's account, transferring entries from the deferred account. If the person had more than one relevant deferred member's account, they must select – within three months of re-entering scheme employment - which one should close. If they fail to make a selection, the scheme manager must make the choice for them. [Regulation 49(3) and (4)]

Retirement Benefits

116. Employer initiated retirement (Regulation 62)

An employer can determine that an active member age 55 or over but under age 60 who on the grounds of business efficiency is dismissed or has their employment terminated by mutual consent, can receive immediate payment of retirement pension without the early payment reduction. An employer may only use this discretion if the employer determines that a retirement pension awarded on this basis would assist the economical, effective and efficient management of its functions having taken account of the costs likely to be incurred in the particular case.

[Regulation 62(1) and (2)]

117. Exercise of partial retirement option (Regulation 63)

An active member aged at least 55 who would be entitled to immediate payment of pension if they leave pensionable service and who claims payment of the pension, may opt to claim the whole of their accrued pension but continue in pensionable service. The person concerned must give appropriate notice to the scheme manager and the partial retirement option is taken to be exercised on a date agreed between the member and the scheme manager. [Regulation 63(5)]

Ill-Health Benefits

***118. Review of ill-health award or early payment of retirement pension
(Regulation 68)***

The scheme manager must have a policy for reviewing, at such intervals as it considers appropriate, the award of ill-health pensions where the recipient is under deferred pension age and has been receiving the award for less than 10 years, and for reviewing the early payment of deferred pensions on ill-health grounds for so long as the recipient is below deferred pension age.

[Regulation 68(1) and (2)]

119. Consequences of review (Regulation 69)

If, following the review of a lower tier ill-health pension under Regulation 68, the scheme manager determines that the recipient is capable of performing the duties appropriate to the role from which the person retired on grounds of ill-health, the employer must consider whether or not to make an offer of re-employment.

[Regulation 69(3)]

120. Commencement of pensions (Regulation 70)

If a deferred member requests, and is entitled to, the early payment of retirement pension on grounds of ill-health, the scheme manager must determine the date of payment as being the date on which the person became incapable of undertaking regular employment because of infirmity of mind or body or, if that date cannot be ascertained, the date of the member's request for early payment. [Regulation 70(7)]

If a deferred member requests deferral of payment of a deferred pension beyond deferred pension age, or requests early payment with an early payment reduction before deferred pension age, the scheme manager will decide the payment date after the claim for payment has been made.

[Regulation 70(8)]

Allocation

121. Allocation election (Regulation 72)

The scheme manager must give consent for the allocation of a portion of pension to a dependant who is not the spouse, civil partner or cohabiting partner of an active or deferred member. (Consent can be withheld if the scheme manager is not satisfied that the person nominated is not substantially dependent of the active member.) [Regulation 72(3)(b) and (4)]

122. Adjustment of allocated benefit (Regulation 75)

If a member who has made an allocation election dies after reaching age 75, and the amount of allocated pension does not qualify as a dependant's scheme pension under section 167 of the Finance Act 2004 (pension death benefit rules), the amount may be adjusted in a manner determined by the scheme manager.

[Regulation 75(1) and (2)]

Death Benefits

123. Meaning of "surviving partner" (Regulation 76)

A cohabiting partner may be considered a "surviving partner" and potentially qualify for a pension provided they meet certain conditions, one of which is that they must have been in a "long-term relationship" – a continuous period of at least two years – at the date at which entitlement needs to be considered. The scheme manager has discretion to allow the person to qualify where the period is less than two years. [Regulation 76(1)(b)(v) and (2)]

124. Person to whom lump sum death benefit payable (Regulation 95)

The scheme manager has absolute discretion as to the recipient of any lump sum death benefit payable. [Regulation 95]

125. Payment of pensions under Part 6 "Death Benefits" (Regulation 100)

If a child's pension is due in respect of an eligible child under age 18, the scheme manager will determine to whom it should be paid and will give directions to that person as to how the payment should be applied for the eligible child's benefit. [Regulation 100(2)]

126. Surviving partner's pensions and eligible child's pensions: suspension and recovery (Regulation 101)

A scheme manager has the right to cease paying a surviving partner's pension and/or eligible child's pension and recover any payment made in respect of a pension where it appears to the scheme manager that the recipient made a false declaration, or deliberately suppressed a material fact in connection with the award. (This does not affect the scheme manager's right to recover a payment or overpayment under any other provision where the scheme manager considers it appropriate to do so.) [Regulation 101(2) and (3)]

127. Provisional awards of eligible child's pensions: later adjustments

(Regulation 102)

If children's pensions have been made to certain persons on the basis that they were eligible children and there were no others, and subsequently it appears that any of those children were not eligible, or there was a further eligible child to whom no payment has been made, or that a child born after the member's death is an eligible child, the scheme manager has discretion to adjust the amount of pensions as required in view of the facts as they subsequently appear. The adjustments may be made retrospectively. (This does not affect the scheme manager's right to recover a payment or overpayment under any other provision where the scheme manager considers it appropriate to do so.) [Regulation 102(2) and (3)]

128. Adjustment of benefits to comply with FA 2004 where members die over 75

(Regulation 104)

If a member dies after reaching age 75 and any part of a pension to which a person becomes entitled on the death would not qualify as a dependant's scheme pension for the purposes of section 167 of the Finance Act 2004 (the pension death benefit rules), the scheme manager has discretion to adjust the benefit payable to the person so that it would qualify under that section of the Act. [Regulation 104(1)(a) and (2)]

Contributions

129. Member contributions (Regulation 110)

Where there is a change in scheme employment or a material change which affects the member's pensionable pay in the course of a financial year and the revised amount falls into a different contribution rate band, the scheme manager must determine that this rate should be applied and inform the member of the new contribution rate and the date from which it is to be applied. [Regulation 110(5)]

When identifying the appropriate contribution rate, a reduction in pay in certain circumstances as listed in Regulation 110 are to be disregarded. In addition, the scheme manager can specify the circumstances in a particular case where a reduction in pensionable pay will be disregarded. [Regulation 110(7)(h)]

130. Contributions during absence from work due to illness, injury, trade dispute or authorised absence (Regulation 111)

Where an active member is absent from scheme employment because of illness or injury and not entitled to receive pensionable pay, or because of trade dispute or authorised unpaid absence, they may pay member contributions; if they do, the scheme employer may require that they should also pay employer contributions. [Regulation 111(2), (3) and (4)]

131. Deduction and payment of contributions (Regulation 114)

Member contributions due under Regulation 110 may be deducted by the scheme employer from each instalment of pensionable pay as it becomes due, unless another method of payment has been agreed between the scheme manager and the member. [Regulation 114(1)]

Contributions due in respect of absence from work on reserve forces service leave may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951. [Regulations 114(2)]

Contributions which the member is required to pay, or has elected to pay under Regulations 111 and 113 may be paid by a lump sum or by deduction from instalments of pensionable pay as agreed between the member and the scheme manager. [Regulation 114(3)]

Transfers

132. Statement of entitlement (Regulation 135)

The scheme manager must specify in a statement of entitlement the "guarantee date" date by reference to which the cash equivalent or club transfer value is calculated; this date must fall within the three months beginning with the date of the member's application for the statement of entitlement and within ten days ending with the date on which the member is provided with the statement. The scheme manager has discretion, if it believes reasonable, to extend this date to within six months of the date of the member's application if, for reasons beyond the scheme manager's control, the information needed to calculate the transfer value cannot be obtained before the end of the three month period. [Regulation 135(4)]

133. Request for acceptance of a transfer payment (Regulation 141)

There is a time limit of one year from becoming an active member in which a person can request a transfer payment from a non-occupational pension scheme. The scheme manager has the discretion to extend this period. [Regulation 141(3)]

134. Transfer statement (Regulation 142)

The scheme manager can require an active member to ask the scheme manager of a previous non-club pension scheme to provide a statement of the amount of transferred pension that the member would be entitled to count provided that the transfer date falls within two months of the date of the statement. [Regulation 142(2)]

135. Club transfer value statement (Regulation 144)

The scheme manager can require an active member to ask the scheme manager of a previous club pension scheme to provide a statement of the amount of transferred pension that the member would be entitled to count provided that the transfer date falls within two months of the date of the statement. [Regulation 144(2)]

Appeals and determinations

136. Appeal concerning entries on the certificate (Regulation 148)

If a member is not satisfied with a certificate setting out the details in their pension account(s) as required under Regulation 146, they can require the scheme manager to deal with their disagreement under arrangements implemented by the scheme manager in accordance with the requirements of section 50 of the Pensions Act 1995 (resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008. The scheme manager must have these arrangements in place. [Regulation 148(1)]

137. Determinations by the scheme manager (Regulation 151)

It is the scheme manager that must determine whether a person is entitled to an award or to retain an award. [Regulation 151]

138. Role of IQMP in determinations by the scheme manager (Regulation 152)

The scheme manager must select an Independent Qualified Medical Practitioner to provide a written opinion in respect of medical matters which may only be decided by having regard to such an opinion. [Regulation 152(1)]

If a person wilfully or negligently fails to submit to medical examination by the selected IQMP and the IQMP is unable to give an opinion on the basis of the medical evidence available, the scheme manager can make the determination based on such medical evidence as the scheme manager thinks fit, or without medical evidence. [Regulation 152(7)]

139. Review of medical opinion (Regulation 153)

Where a member requests a review of an IQMP's opinion in the light of new evidence received by the scheme manager within 28 days of the member having received the opinion, the scheme manager may agree to giving the IQMP the opportunity of reviewing the opinion. [Regulation 153(1).

Upon receiving the IQMP's response the scheme manager must confirm or revise its original determination and advise the member accordingly. [Regulation 153(4) and (5)]

140. Notice of appeal (Regulation 155)

If a member wishes to appeal against a determination made by the scheme manager and their grievance lies in the medical opinion upon which the determination was based, they can appeal to a board of medical referees. The appeal must be made within 28 days of the date on which the member receives the relevant documents under Regulation 154(4). If the appeal is not made within this time limit and the scheme manager is of the opinion that the person's failure to give notice within the required period was not due to the person's own default, the scheme manager has a discretion to extend the time limit for such period as the scheme manager considers appropriate, not exceeding six months from the date the Regulation 154(4) documents were supplied. [Regulation 155(2)]

141. Reference of appeal to the board (Regulation 156 - See also Regulation 161)

Where a member has given notice of appeal to a board of medical referees, before the board arranges a time and place for the interview and medical examination a member of the board will review the documents supplied to the board in accordance with Regulation 156. If the board member is of the opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded the board member will notify the Secretary of State accordingly. This will be copied to the scheme manager who must, in turn, send a copy of it to the scheme member advising that if their appeal is unsuccessful, the member may be required to pay the scheme manager's costs and requesting notification from the member as to whether, in the circumstances, they wish to continue with, or withdraw, the appeal. [Regulation 156(8) to (12)]

142. Procedure where appeal to be pursued (Regulation 157)

The scheme manager must decide which persons will attend the interview as its representatives. The scheme manager must also decide whether or not to submit written evidence or a written statement (and must decide a response to any written evidence or written statement from the appellant). [Regulation 157(6) to (9)]

143. Expenses of each party (Regulation 161)

If the medical appeal board determines in favour of the scheme manager and states that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded, the scheme manager can require the appellant to pay it such sum not exceeding the total amount of the fees and allowances payable to the board under Regulation 160(1) as the scheme manager considers appropriate.

[Regulation 161(2)]

If the appellant withdraws the appeal requesting cancellation, postponement or adjournment of the date appointed for interview and/or medical examination less than 22 working days before the date appointed, the scheme manager can require the member to pay it such sum not exceeding the total amount of the fees and allowances payable to the board under Regulation 160(1) as the scheme manager considers appropriate.

[Regulation 161(3)(a)]

If the appellant's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed or interview and/or medical examination less than 22 days before the date appointed, the scheme manager can require the member to pay it such sum not exceeding the total amount of the fees and allowances payable to the board under Regulation 160(1) as the scheme manager considers appropriate.

[Regulation 161(3)(b)]

144. Appeals on other issues (Regulation 163)

If a member disagrees with a scheme manager's determination of award under Regulation 151 and the disagreement does not involve an issue of a medical nature, the member can require the scheme manager to deal with the disagreement under requirements which the scheme manager must have in place in accordance with section 50 of the Pensions Act 1995 (requirement for dispute resolution arrangements) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008. [Regulation 163]

Payment of pensions

145. Commutation of small pensions (Regulation 167)

If the pension entitlement of a member of the scheme, or the pension entitlement of a member's beneficiary, does not exceed the small pensions commutation maximum the scheme manager may pay the entitlement as a lump sum. This would, however, be subject to the consent of the recipient and must comply with the commutation provisions that apply in the circumstances. [Regulation 167(3)]

146. Payments for persons incapable of managing their affairs (Regulation 168)

If it appears to the scheme manager that a person other than an eligible child who is entitled to benefits under the scheme, is by reason of mental incapacity or otherwise, incapable of managing his or her affairs, the scheme manager may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the scheme manager may determine, to be applied for the benefit of the person entitled. If the scheme manager does not pay the benefits in this way, the scheme manager may apply them in such manner as it may determine for the benefit of the person entitled, or any beneficiaries of that person. [Regulation 168]

147. Payments due in respect of deceased persons (Regulation 169)

If, when a person dies, the total amount due to that person's personal representatives under the scheme (including anything due at the person's death) does not exceed the limit specified in the Administration of Estates (Small Payments) Act 1965, the scheme manager can pay the whole or part of the amount due to the personal representatives or any person or persons appearing to the scheme manager to be beneficially entitled to the estate, without requiring the production of grant of probate or letters of administration. [Regulation 169]

Forfeiture

148. Forfeiture: offences committed by members, surviving partners or eligible children (Regulation 171)

If a member, surviving partner or eligible child is convicted of a relevant offence, the scheme manager can withhold pensions payable under the scheme to a member, any person in respect of the member, a surviving partner or an eligible child, to such extent and for such duration as it considers appropriate. "Relevant offence" is defined in this Regulation. The definition includes offences injurious to the State (including treason) or likely to lead to a serious loss of confidence in the public service. There are certain conditions set out in the Regulation, e.g. it is only the part of the pension that exceeds any guaranteed minimum pension that can be withheld.

[Regulation 171(1), (2), (3) and (5).]

Where a pension is withheld, the scheme manager can at any time, and to such extent and for such duration as the manager thinks fit, apply the pension for the benefit of any dependant of the member or restore it to the member. [Regulation 171(4)]

149. Forfeiture of pensions: offences committed by other persons (Regulation 172)

If a surviving partner or eligible child is convicted of the murder of a scheme member from whose benefits their pension would be derived the scheme manager must withhold all of the survivor's or child's pension otherwise payable. However, if a surviving partner or eligible child is convicted of the manslaughter of the member or any other offence, apart from murder, of which the unlawful killing of the member is an element, the scheme manager has discretion as to whether or not to withhold the pension to which they would otherwise be entitled. The amount withheld must only be that part of the pension which exceeds any guaranteed minimum pension. If the conviction is subsequently quashed, the pension must be restored with effect from the day after the date on which the member died. If, after the conviction has been quashed, the person is again convicted of murder, manslaughter or an associated offence as outlined above, any restoration is cancelled.

[Regulation 172(1) to (5)]

***150. Forfeiture of lump sum death benefit: offences committed by other persons
(Regulation 173)***

If a person is convicted of a relevant offence, i.e. the murder or manslaughter of the member, or any other offence of which the unlawful killing of the member is an element, the scheme manager must withhold all of any lump sum death benefit payable to that person. If, however, the conviction is subsequently quashed on appeal, the scheme manager may, to such extent and for such duration as it thinks fit, restore to the person the amount of benefit withheld. If, after the conviction has been quashed, the person is again convicted of murder, manslaughter or an associated offence as outlined above, any restoration is cancelled. [Regulation 173]

***151. Forfeiture: relevant monetary obligations and relevant monetary losses
(Regulation 174)***

If a member has a relevant monetary obligation or has caused a relevant monetary loss, the scheme manager may, to such extent and for such duration as it considers appropriate, withhold benefits payable to that person under the scheme. "Relevant monetary obligation" and "relevant monetary loss" are defined in the Regulation. There are certain limits, e.g. the amount withheld may only be that which exceeds the person's guaranteed minimum pension and the scheme manager may only withhold it if there is no dispute about the amount or, if there is, there is a court order or the award of an arbitrator. The monetary obligation must have been incurred to the employer after the person became an active member and arising out of or connected with the scheme employment in respect of which the person became a member of the scheme, and arising out of the person's criminal, negligent or fraudulent act or omission. The procedure is set out in Regulation 176. [Regulation 174]

152. Set-off (Regulation 175)

A scheme manager has a discretion to set off a "relevant monetary obligation" against a member's entitlement to benefits under the scheme, subject to certain conditions which are similar to those contained in Regulation 174 (Forfeiture). The procedure is set out in Regulation 176. [Regulation 175]

Payment and Deduction of Tax

153. Payment on behalf of members of lifetime allowance charge (Regulation 178)

At a scheme member's request, the scheme manager may pay on the member's behalf any amount that is payable by way of the lifetime allowance charge under section 214 of the Finance Act 2004. The scheme manager may only comply with the request if the member pays it the amount in question on or before the date on which the event occurs or the member authorises the deduction of the amount from a lump sum becoming payable to the member under the scheme at the same time as the event occurs. [Regulation 178]

154. Evidence of entitlement (Regulation 184)

The scheme manager can require any person who is in receipt of a pension or may have entitlement to a pension or lump sum under the scheme to provide such supporting evidence as the scheme manager may reasonably require so as to establish the person's identity and their continuing or future entitlement to the payment of any amount under the scheme. [Regulation 184(1) and (2)]

If a person fails to comply with the scheme manager's requirements in this respect, the scheme manager can withhold the whole or part of any amount that it otherwise considers to be payable under the scheme. [Regulation 184(3)]

Added pension

155. Amount of accrued added pension may not exceed overall limit of extra pension (Schedule 1 Part 1, Paragraph 4)

The total amount of accrued added pension must not exceed a certain limit. If it appears to the scheme manager that a member who has elected to make periodical contributions will exceed the limit the scheme manager may cancel the election (by written notice to the member). [Schedule 1 Part 1, Paragraph 4]

***156. Member's election to make periodical contributions for added pension
(Schedule 1 Part 1, Paragraph 7)***

If a scheme member wishes to make periodical payments for added pension, the scheme manager can set a minimum amount which must be paid. [Schedule 1 Part 1, Paragraph 7(3)]

157. Periodical payments (Schedule 1 Part 2, Paragraph 8)

If a scheme member wants to make periodical payments for added pension, but does not want them to be deducted from pensionable pay, the scheme manager may agree another method of payment. [Schedule 1 Part 2, Paragraph 8 (3)]

158. Periodical payments during periods of assumed pensionable pay (Schedule 1 Part 2, Paragraph 10)

After a period of assumed pensionable pay or a period of reduced pay, the member may give written notice to the scheme manager authorising the employer to deduct the aggregate of payments – which would have been made but for the leave – from the member's pay during the period of six months from the end of the period of reduced pay. The scheme manager can extend this period of six months. [Schedule 1 Part 2, Paragraph 10(4)]

Tapered Protection

159. Meaning of "tapered protection closing date" (Schedule 2 Part 1, Paragraph 3)

The tapered protection closing dates for tapered protection members are given in the 1992 scheme tables in Schedule 2 Part 4. In most cases the appropriate closing date can be ascertained by reference to the band of dates in which the firefighter's birthday falls. The tapered protection date for a tapered protection member of FPS 2006 to whom paragraph 9(5) or 21 applies (members returning to pensionable service) is determined by the scheme manager. [Schedule 2 Part 1, Paragraph 3(3); Schedule 2 Part 2, Paragraph 9(5); and Schedule 2 Part 3, Paragraph 21]

Compensation Scheme Discretions

Part 1: General provisions

160. Determining pensionable pay in certain cases (retained firefighters). (Rule 11, paragraphs (5) and (6))

Where the Fire and Rescue Authority are unable to determine the period of a person's service from their records and do not hold records of that person's pay for any period and the necessary documents cannot be obtained from the person, the Authority may estimate the person's pensionable pay from records they hold and may in particular estimate this on the basis of the average of recent pay data for retained firefighters at the same station or stations as that at which the person was based for the relevant period.

Part 2: Injury awards and duty-related compensation

161. Discretion to reduce compensation for death or permanent incapacity while on duty if the firefighter's serious and culpable negligence or misconduct contributed to the circumstances in which the injury was sustained. (Rule 3, paragraph 6)

The Fire and Rescue Authority may consider using the powers contained in Part 2, Rule 3, paragraph 6 of the Firefighters' Compensation Scheme (England) Order 2006 to reduce the amount or sum referred to in paragraph 2 or 4 by such amount as they consider appropriate where the firefighter's serious and culpable negligence or misconduct contributed in any material respect to the circumstances in which the injury was sustained, if they feel it appropriate according to the circumstances of any case which falls within the terms of Part 2, Rule 3.

162. Discretion to accept the status of an unmarried partner (other than a civil partner) where the firefighter and partner had been in a relationship for less than 2 years. (Rule 3, paragraph 10)

Although eligibility normally depends upon a relationship having continued for at least two years, the Fire and Rescue Authority has discretion to make a payment in the event of a shorter period.

163. Discretion to commute small compensatory pension for a lump sum. (Rule 4)

If it is considered appropriate and the total amount of any pension(s) payable to a person – who has attained State pensionable age – under the provisions of

- Part 2, Rule 1 of the Firefighters' Compensation Scheme Order (England) Order 2006,
- Rule 1A1 of the Firemen's Pension Scheme Order 1992,
- Part 6, Rule 1 of the Firefighters' Pension Scheme (England) Order 2006,
- Regulation 105 of the Firefighters' Pension Scheme (England) Regulations 2014
- the Pensions (Increase) Act 1971

does not exceed the commutation limit for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (lump sum rule), the Fire and Rescue Authority can commute the pension(s) to a lump sum in accordance with factors prepared by the Scheme Actuary.

Part 3: Awards on death – Spouses and civil partners

164. Discretion to pay augmented award to spouse or civil partner where specific conditions of eligibility are not met. (Rule 2, paragraph 2 (b) and (c))

Where a person who is or has been a firefighter dies from the effects of a qualifying injury or infirmity of mind or body occasioned by a qualifying injury where the injury was received in the execution of duties performed in circumstances where there was an intrinsic likelihood of the firefighter receiving a fatal injury, for the immediate purpose of saving the life of another person or of preventing loss of human life, an augmented award would be paid to the surviving spouse or civil partner.

According to the circumstances of an individual case, if the Fire and Rescue Authority are of the opinion that the above conditions may have been satisfied and that this Rule should apply, or that it would be inequitable if this Rule were not to apply, they can consider paying an augmented award.

165. Discretion to increase, for such period as the Fire and Rescue Authority think fit, the level of spouse's or civil partner's special or augmented award

where firefighter and spouse or civil partner were living apart at the date of death and the normal level of benefit is reduced under FCS rules. (Rule 4, paragraphs 6 and 7)

The Fire and Rescue Authority may consider, according to the circumstances of each individual case, increasing a surviving spouse's or civil partner's award for such period as the Authority think fit if the firefighter and spouse or civil partner were living separately at the date of death and the normal level of dependant's benefit is reduced accordingly in accordance with Part 3, Rule 4 of the Firefighters' Compensation Scheme (England) Order 2006.

166. Discretion to reinstate all or part of a spouse's or civil partner's special or augmented award for such period as the Authority think fit following the termination of award on marriage, remarriage, formation of a civil partnership or subsequent civil partnership. (Rule 5, paragraphs 1 and 2)

A person entitled to a pension under Part 3 of the Firefighters' Compensation Scheme (England) Order 2006 who marries, remarries, forms a civil partnership or a subsequent civil partnership is not entitled to receive any payment on account of the pension in respect of any subsequent period unless protected by the exclusions set out in Part 3, Rule 5(3). However, the Fire and Rescue Authority can permit the reinstatement of all or part of a spouse's or civil partner's special or augmented award for such period as the Authority think fit on the dissolution of the subsequent marriage or civil partnership, or if the other party to that marriage or civil partnership dies.

Part 4: Awards on death – Children

167. Decision to cease payment of a child's special allowance where the Fire and Rescue Authority are satisfied that the child is no longer permanently disabled or the child's pension should not have been awarded. (Rule 3, paragraph 5(c))

There is entitlement to a child's allowance for a child who is age 18 or over and who was dependent on the deceased at the date of death on grounds of permanent disablement. The Fire and Rescue Authority may decide how and when to periodically review entitlement. The award will cease to be payable if the Authority are satisfied that the child is no longer permanently disabled and not entitled to a child's special allowance under any of the other terms of eligibility.

Part 5: Awards on death – Additional provisions

168. Discretion to award an adult dependent relative's special pension for such period(s) as the Fire and Rescue Authority may determine. (Rule 1)

If the conditions of Part 5, Rule 1 of the Firefighters' Compensation Scheme (England) Order 2006 are met, the Fire and Rescue Authority may consider, according to the circumstances of an individual case, the payment of a dependent relative's special pension to an adult dependent relative not entitled to any other award in respect of the same firefighter. It would be calculated in accordance with Schedule 4, Part 1 of the Order.

169. Discretion to award a dependent relative's gratuity. (Rule 2, paragraph 3)

The Fire and Rescue Authority may consider the payment of a dependent relative's gratuity to a dependent relative not entitled to any other award in respect of the same firefighter according to the circumstances of an individual case. The gratuity or gratuities payable must not exceed the amount of the deceased's contributions.

170. Discretion, with the consent of the person entitled to the award, to commute for a lump sum a small pension awarded to a surviving spouse or civil partner. (Rule 3)

If the total amount of any pension payable to a surviving spouse or civil partner under Part 3 of the Firefighters' Compensation Scheme (England) Order 2006, together with any increase under the Pensions (Increase) Act 1971, does not exceed the commutation limit for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (lump sum death benefit rule), and

- (a) the firefighter died before age 75, and
- (b) the Fire and Rescue Authority are satisfied that there are sufficient reasons, and
- (c) the surviving spouse or civil partner consents,

the Authority may commute the whole of the pension for a lump sum in accordance with the guidance of the Scheme Actuary at the time when the pension first becomes payable.

171. Discretion, with the consent of the child, surviving parent or guardian, to

commute for a lump sum a small pension awarded to a child. (Rule 4)

If a child is entitled to a special allowance under Part 4, Rule 1 of the Firefighters' Compensation Scheme (England) Order 2006, and

(a) the Fire and Rescue Authority are satisfied that there are sufficient reasons, and

(b) the surviving parent or the child's guardian or – if neither – the child him or herself consents,

the Fire and Rescue Authority may commute the pension for a lump sum in accordance with Part 2 of Schedule 4 and the guidance of the Scheme Actuary at the time when the pension first becomes payable.

Part 6: Determination of questions and appeals

172. Requirement to reconsider, at person's request, his/her claim to an award where the Fire and Rescue Authority do not admit the claim at all, or do not admit it to its full extent. (Rule 3)

If a person claims that they are entitled to an award or to any payment in respect of an award under the Firefighters' Compensation Scheme (England) Order 2006 and the Fire and Rescue Authority do not admit the claim at all or do not admit it to its full extent, in accordance with Part 6, Rule 1, paragraph 1, the Authority must reconsider the case if the person applies to them to do so. The "reconsideration" will be under the Internal Dispute Resolution Procedures as set up for use in the reconsideration of awards under the Firemen's Pension Scheme Order 1992, the Firefighters' Pension Scheme (England) Order 2006 and the Firefighters' Pension Scheme (England) Regulations 2014.

The Authority can decide who should be the Stage One and Stage Two decision makers.

(If the person's grievance lies in the content of the medical opinion upon which the Authority based their decision, the person should use the process set out in Part 6 Rule 2 "Appeal to Medical Appeal Board" of the Order.)

Part 7: Servicemen

173. Discretion to increase an award for a serviceman who, at the end of his/her

forces period, is permanently disabled by a qualifying injury or injury received during his/her forces period. (Rule 2 and Rule 4)

Should a serviceman be permanently disabled at the end of his/her forces period and the infirmity that occasioned his/her incapacity for the performance of duty was occasioned by an injury received during his/her forces period or by a qualifying injury, the Fire and Rescue Authority may consider paying or increasing any pension payable under the Firemen's Pension Scheme Order 1992, the Firefighters' Pension Scheme (England) Order 2006 and the Firefighters' Pension Scheme (England) Regulations 2014 in accordance with Part 7, Rule 2 and Rule 4 of the Firefighters' Compensation Scheme (England) Order 2006, having regard to the limitations in Schedule 6.

174. Discretion to increase dependants' benefits under the Firefighters' Pension Scheme 1992 to the level of a flat-rate award if a serviceman dies from the effects of an injury received during his/her forces period or a qualifying injury. (Rule 3 and Rule 4)

Should a serviceman –

- a) die during his/her forces period, or
- b) be permanently disabled at the end of that period, not since have been a firefighter, and die from the effects of an injury that occasioned his/her incapacity for the performance of duty or while in receipt of a pension,

the Fire and Rescue Authority may consider increasing any dependants' benefits as allowed under Part 7, Rule 3 and Rule 4 of the Firefighters' Compensation Scheme (England) Order 2006, having regard to the limitations in Schedule 6.

Part 7A: Reservists

175. Discretion to increase an award to a reservist who is permanently disabled as a result of an injury received during his/her forces period or as a result of a qualifying injury. (Rules 2 and 4)

If a person takes up employment with the Fire and Rescue Authority on or after 6 April 2006 or,

having been employed before that date becomes a member of the Firefighters' Pension Scheme 2006 or the Firefighters' Pension Scheme 2015 and becomes a reservist, for the purposes of the Firefighters' Compensation Scheme 2006 he/she shall be treated as if they had continued to be a firefighter during the period of relevant service in the armed forces (the "forces period").

If at the end of the forces period or subsequently after resuming service as a firefighter the person is permanently disabled and the infirmity that occasioned his/her incapacity for the performance of duty was occasioned by an injury received during the forces period or by a qualifying injury, the Fire and Rescue Authority may, according to the circumstances of the case, consider increasing the amount of pension payable under the Firefighters' Pension Scheme 2006 or the Firefighters' Pension Scheme 2015, subject to the limitations of Schedule 7 of the Firefighters' Compensation Scheme (England) Order 2006.

176. Discretion to increase dependants' benefits if a reservist dies from the effects of an injury received during his/her forces period or a qualifying injury. (Rules 3 and 4)

If a person takes up employment with the Fire and Rescue Authority on or after 6 April 2006 or, having been employed before that date becomes a member of the Firefighters' Pension Scheme 2006 and becomes a reservist, for the purposes of the Firefighters' Compensation Scheme 2006 he/she shall be treated as if they had continued to be a firefighter during the period of relevant service in the armed forces (the "forces period").

If the person dies during the forces period or is permanently disabled at the end of the forces period and dies from the effect of an injury that occasions incapacity for the performance of duty the Fire and Rescue Authority may, according to the circumstances of the case, consider increasing the amount of pension payable under the Firefighters' Pension Scheme 2006 or the Firefighters' Pension Scheme 2015, subject to the limitations of Schedule 7 of the Firefighters' Compensation Scheme (England) Order 2006.

Part 8: Special cases

177. Discretion to pay an injury award to or in respect of an employee of a Fire and Rescue Authority who is not a firefighter but who has to retire, or dies, as a result of an injury received without his/her own default while in attendance at a fire in the execution of duties as an employee of the Authority. (Rule 1)

If an employee who is not a firefighter suffers an injury without their own default –

(a) while in attendance at a fire, and

(b) in the execution of their duties as an employee of the Fire and Rescue Authority, and

(c) has to retire in consequence of the injury

the Authority, having regard to the circumstances of the case, may grant such pension or gratuity under the Firefighters' Compensation Scheme (England) Order 2006 as the Authority think fit.

If in the circumstances outlined in (a) and (b) above, the person dies from the effect of the injury, either before or after retiring from the employment, the Authority, having regard to the circumstances of the case, may grant such pension, gratuity or allowance as they think fit to a surviving spouse, civil partner and/or child.

If granted, such awards would be subject to the terms and limits of Part 8, Rule 1 of the Firefighters' Compensation Scheme (England) Order 2006.

Part 9: Review, withdrawal and forfeiture of awards

178. Review of injury award – discretion to decide intervals at which a person's degree of disablement should be reviewed. (Rule 1, paragraph 1)

If a Fire and Rescue Authority make an injury award they must periodically review whether or not the person's degree of disablement has substantially altered; if it has, the pension has to be reviewed. If the disability has ceased the pension must cease. The Authority has discretion to decide the intervals at which the entitlement is reviewed.

179. Review of injury award – discretion, 5 years after an injury pension first becomes payable, to resolve that no further review of degree of disablement should take place. (Rule 1, paragraph 3)

According to the circumstances of an individual case, the Fire and Rescue Authority may – at any time 5 years after an injury pension first becomes payable – determine that no further review of entitlement to the injury pension as required by Part 9, Rule 1, paragraph 1 should take place.

180. Discretion to reduce the level of an injury award to not less than half of the full amount where a person, who is permanently disabled, contributed to the infirmity by his/her own default. (Rule 2)

The Fire and Rescue Authority may consider using the powers contained in Part 9, Rule 2 of the Firefighters' Compensation Scheme (England) Order 2006 to reduce an injury award where a person is permanently disabled and has brought about or contributed to the infirmity by his/her own default if the Authority feel it appropriate according to the circumstances of any case which falls within the terms of Rule 2.

181. Discretion to withdraw the whole or part of a person's pension (other than a spouse's or civil partner's award) during any period of re-employment as a firefighter with a Fire and Rescue Authority. (Rule 3)

The Fire and Rescue Authority may withdraw the whole or part of any pension payable under the Firefighters' Compensation Scheme (England) Order 2006 (other than an award made to a spouse or civil partner) for any period during which the person entitled to it is employed as a firefighter by any Fire and Rescue Authority.

(The Authority could consider using the abatement principles for pensions paid under the Firemen's Pension Scheme Order 1992 and Firefighters' Pension Scheme (England) 2006, the abatement principle set out in Firefighters' Pension Scheme Circular 10/2009, and in HM Treasury guidance.)

182. Discretion to withdraw a pension in whole or in part, permanently or temporarily, on a person's conviction of certain offences. (Rule 4, paragraphs 1 to 3)

The Fire and Rescue Authority may consider using the powers contained in Part 9, Rule 4, paragraphs 1 to 3 of the Firefighters' Compensation Scheme (England) Order 2006 to withdraw a pension in whole or in part where a pensioner has been convicted of an offence if they feel it appropriate according to the circumstances of any case which falls within the terms of Rule 4 and subject to the certification of the Secretary of State where required.

183. Discretion to restore at any time and to such extent as the Fire and Rescue

Authority think fit, a pension withdrawn under Part 9, Rule 4, paragraphs 1 to 3, to the pensioner or to apply it for the benefit of any dependant of the pensioner. (Rule 4, paragraph 4)

If the Fire and Rescue Authority withhold a pension in whole or in part, under Part 9, Rule 4, paragraphs 1 to 3 of the Firefighters' Compensation Scheme (England) Order 2006, according to the circumstances of the case they may determine, at such time as they think fit, to restore it to the pensioner or to apply it for the benefit of any dependant of the pensioner.

184. Discretion to decide to what extent an award should be forfeited by a person who has been convicted of an offence under section 34(6) of the Fire and Rescue Services Act 2004 (acts or omissions for the purposes of obtaining awards or other sums). (Rule 5)

If a person has been convicted of an offence under section 34(6) of the Fire and Rescue Services Act 2004 (acts or omissions for purposes of obtaining awards or other sums), according to the circumstances of the case the Fire and Rescue Authority may determine under Part 9, Rule 5 of the Firefighters' Compensation Scheme (England) Order 2006 that he/she should forfeit the whole or part of an award or sum obtained under the Firefighters' Compensation Scheme (England) Order 2006.

Part 10: Payments of awards and financial provisions

185. Determination of intervals at which instalments of an injury pension or allowance should be paid. (Rule 2, paragraph 1)

Injury awards must be paid in advance but the Fire and Rescue Authority can determine the intervals at which payments will be made.

186. Discretion to delay payment of an award to the extent necessary for determining any questions of the Fire and Rescue Authority's liability. (Rule 2, paragraph 1)

The Fire and Rescue Authority can use their power under Part 10, Rule 2, paragraph 1 of the

Firefighters' Compensation Scheme (England) Order 2006 to delay payment of an award to the extent necessary for determining any question as to the Authority's liability.

187. Discretion to pay a gratuity in instalments, rather than as a lump sum, of such reasonable amounts and over such reasonable period as the Fire and Rescue Authority think fit. (Rule 2, paragraph 7)

The Fire and Rescue Authority can decide whether to pay a gratuity as a lump sum or in instalments.

Schedule 5: Appeal to board of medical referees

188. Discretion to extend the 14-day time limit in which a person must lodge a medical appeal, to a period not exceeding 6 months from the date of issue of the medical opinion to the person, provided the Fire and Rescue Authority are of the opinion that the person's failure to lodge the appeal within 14 days was not due to his/her own default. (paragraph 1(2))

The Fire and Rescue Authority can permit the extension of the 14-day time limit (to a maximum of six months) in which a person must lodge an appeal to a Board of Medical Referees.

(It could be worth, in any case, considering extending the period to 28 days to be in line with time limit for lodging an appeal to such a Board under the Firefighters' Pension Schemes.)

189. Discretion to decide the Fire and Rescue Authority's representation at Medical Appeal Board interview. (paragraph 5(5))

The Fire and Rescue Authority can decide who should represent the Authority at a Medical Appeal Board interview at the time that the date of the interview is set.

190. Discretion to decide whether or not to submit written evidence or a written statement to Medical Appeal Board. (paragraph 6(1))

The Fire and Rescue Authority can decide whether or not to submit written evidence or a written statement to a Medical Appeal Board.

191. Discretion, where Medical Appeal Board decide that a person's appeal was "frivolous, vexatious or manifestly ill-founded" to require the appellant to pay the Fire and Rescue Authority such sum as the Authority think fit, not exceeding the fees and allowances of the specialist member of the Board. (paragraph 9(2))

If the Medical Appeal Board decides an appeal in favour of the Fire and Rescue Authority and reports that in its opinion the appeal lodged by the appellant was frivolous, vexatious or manifestly ill-founded, the Authority can require the appellant to pay the Authority such sum as is equal to, but not greater than, the total amount of fees and allowances as determined by the Secretary of State payable to the specialist member of the Board appointed under Schedule 5, paragraph 3(2).

192. Discretion, where appellant gives notice to the Medical Appeal Board, withdrawing the appeal within 21 working days before the date appointed for interview or medical examination, to require the appellant to pay such sum as the Fire and Rescue Authority think fit, not exceeding the Board's total fees and allowances. (paragraph 9(3))

If the appellant gives notice to the Medical Appeal Board of withdrawing an appeal within 21 working days prior to the date appointed for an interview or medical examination by the Board, the Fire and Rescue Authority may require the appellant to pay such sum as is equal to, but not greater than, the Board's fees and allowances as determined by the Secretary of State under Schedule 5, paragraph 8 of the Firefighters' Compensation Scheme (England) Order 2006.

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