



Firefighters' Pension Scheme Circular

Circular Number:	FPSC 10/2009	Date Issued:	25 September 2009
Action:	For Information		
Title:	<i>FIREFIGHTERS' PENSION SCHEME 1992 – ABATEMENT OF PENSION ON THE RE- EMPLOYMENT OF A FIREFIGHTER</i>		
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Summary:	This circular advises FRAs about CLG's position regarding the abatement of a member's pension on re-employment
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1.0 Abatement of pension upon re-employment

Changes to the tax regime in 2006 relaxed the rules limiting the opportunities for a person to draw pension and continue in employment. Section 3(i) of Firefighters' Pensions Circular 8/2006 gave advice to Fire and Rescue Authorities (FRAs) on the implications of allowing firefighters to retire and then be re-employed.

We continue to receive enquiries concerning the need for pension abatement and the purpose of this circular is to clarify CLG's position.

1.1 Re-employment

Members of the Firefighter's Pension Scheme (FPS), in line with members of the Police and Armed Forces schemes, receive special treatment and, under the Registered Pension Schemes (Prescribed Schemes and Occupations) Regulations 2005 (SI 2005 No. 3451) will retain a right to payment of pensions from age 50, i.e. before reaching the statutory normal minimum pension age, which is set to rise to age 55 from April 2010.

Increased longevity and general improvements in health and well-being inevitably mean that many firefighters will wish to remain in the Fire and Rescue Service. The rules of the FPS and NFPS do not prevent a firefighter remaining in employment after the normal pension/retirement age specified in the relevant schemes but a member cannot access benefits before he/she retires.

FRAs are under no obligation to re-employ firefighters who have retired. Nor have the rules of the FPS and the NFPS been amended to provide for "flexible retirement" (apart from the NFPS provision which allows for member-initiated early retirement from age 55).

Pensions are intended to provide income in retirement. FRAs will need to decide how to react to requests from firefighters who wish to retire and be re-employed as a means of taking their pension benefits, including the pension commencement lump sum. As recommended in paragraph 3.5 of FPSC 8/2006, FRAs should have formulated a policy which takes account of factors such as employment law; equal opportunities; resource planning; and their own legal advice.

Where a retired firefighter is re-employed, the FRA responsible for paying the member's pension can legitimately abate it to the point where the aggregate of the pension in payment and the salary received on re-employment does not exceed the level of earnings directly prior to their retirement. The substantive pay at the last day of service comprised of all permanent elements of pensionable pay, expressed as an annual rate, should be the level of earnings used for the comparison.

1.2 Abatement

Abatement is the process whereby a member's pension can be reduced or stopped if a member retires and then returns to work and their earnings on re-employment (including pension) exceed their earnings before they retired.

Government policy, set by HM Treasury, requires public sector pensions to be abated in certain circumstances when a public servant is re-employed following retirement. The purpose of abatement is to protect public funds. It limits the remuneration payable at any one time in respect of a particular job preventing both the cost of pay and pension falling to the public purse; it ensures that those who receive early (often enhanced) pensions have that taken into account; generally protects public funds from abuse.

There are two forms of abatement. *In-service abatement* occurs where re-employment is in a post covered by the same scheme which is paying the individual's pension. This would cover cases that would fall under Rule K4 of the FPS 1992 where a FRA responsible for paying a pension can reduce it, or withdraw it altogether, during any time where a retired member is re-employed as a regular firefighter. This would still apply in cases where the retired member was re-employed with another FRA. Different groups of employees within an FRA may belong to different pension schemes and it is possible, therefore, that a retired member of the FPS could be re-employed by a FRA in a post covered by, say, the Local Government Pension Scheme. Whilst the rules of the FPS stop short of dealing with the abatement of a retired member's pension when they are re-employed to a position other than that of a regular firefighter, it is DCLG's view that abatement of the FPS pension should be applied where a retired member has been re-employed to any position by any FRA. The regulations of the new scheme specifically provide for this. Under Part 9, rule 3 of the NFPS 2006, a FRA responsible for paying a pension can reduce it, or withdraw it altogether, during any time where a retired member is re-employed in any capacity by any FRA.

In addition to *in-service abatement*, government policy requires the abatement of public sector pensions in cases where retired public servants are re-employed to any employing public sector organisation without going through an open competition. This form of abatement is termed as *Inter-service abatement* and its application is required up to the point where the public servant reaches the normal pension age of the scheme that is paying their pension. Prior to re-employment the person declares the source of the pension and either the pension is reduced by the paying authority or pay is reduced by the new employer. Whilst this requirement represents the minimum standard, some employers go further and abate a member's pension (or pay if they are not the pension paying authority) in cases where they are re-employed in any capacity in the public sector, applying *inter-service abatement* for the full term that they are re-employed up to and beyond normal pension age. It is CLG's view that FRAs should consider applying, at least, the minimum standard where the circumstances apply.

1.3 Finance implications

FRAs should give due consideration to the impact on pension finance and specifically the pension fund account, in which CLG has a particular interest. Whilst it can be argued that a pension commencement lump sum represents the actuarial value of the pension surrendered (so the effect on the pension liability is neutral) payment of substantial lump sums earlier than perhaps anticipated and without sufficient planning or control could have an adverse effect on cash flows and result in inaccurate forecasts of expenditure. This could, in turn, result in shortfalls in the pension top-up grant paid by central government (via CLG) to FRAs.

1.4 Pension Fund Account Action

Where a FRA applies abatement, the liability in terms of the pension account is suspended. The amount of pension abated should not be recorded as pensions outgo for the purposes of the top-up grant until the person leaves employment and the pension, or the remainder of the pension, comes into payment. HMRC rules allow for abatement of public service pensions (see HMRC manual RPSM09101560).

Where, for whatever reason, a FRA decides that it will not apply abatement, CLG will expect the pension costs to be borne by the FRAs operating account, rather than the pension account, until the scheme member leaves employment.

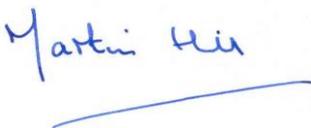
1.5 Amendment to the FPS and NFPS

To support the policy outlined above, CLG are proposing the following amendments to the FPS and the NFPS:

- Amendment to Rule K4 of the FPS to provide that a fire and rescue authority may withdraw the whole or any part of the pension for any period during which the person is employed in any capacity by any fire and rescue authority. This will bring Rule K4 into line with Part 9, rule 3(3) of the NFPS;
- Amend Rule LA2 (special payments and transfers into Firefighters' Pension Fund) of the FPS and Part 13, rule 2 (payments and transfers into the Firefighters' Pension Fund) to provide that where a fire and rescue authority continues to pay a pension in whole or in part, the fire and rescue authority shall pay into the Firefighters' Pension Fund an amount equal to the amount of the firefighter's earnings on re-employment that exceeds the level of earnings directly prior to their retirement.

1.6 Summary

Whilst both the FPS and the NFPS rules on pension reduction (abatement) are framed in a way that gives FRAs discretion over the application of abatement, CLG would expect *in-service* abatement to be applied to both FPS and NFPS pensions and for this to be reflected in an authority's general abatement policy. In addition, CLG would also expect FRAs to formulate policy in regards to *inter-service* abatement having regards to HM Treasury's minimum standard. If an authority decides not to apply abatement, the cost of any pension will not be met by the pension fund account.



Martin Hill