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| This circular is | Relevant to the National Framework | | |
| Status | This circular concerns changes to the Firefighters' Pension Scheme. It cancels FSC 9/2003, Part A and FSC 14/2004, Part B. | | |

The Firemen's Pension Scheme (Amendment) Order 2004

Issued by:

Martin Hill

Addressed to:

**The Chief Executive to the County Council
The Clerk to the Fire and Civil Defence Authority
The Clerk to the Combined Fire Authority
The Clerk to the London Fire and Emergency
Planning Authority
The Chief Fire Officer**

Please forward to:

This circular should be brought to the attention of your Fire and Rescue Authority, Pension Managers, Brigade Medical Officers/Occupational Health Managers, Human Resources Managers and individual firefighters.

Summary

The Firemen's Pension Scheme (Amendment) Order 2004 was laid before Parliament on 28th July and will come in to force on 13th September 2004. This circular provides background, details of the amendments and advice and guidance on implementation which will need to be actioned by Fire and Rescue Authorities and their human resources and pension scheme administrators .

For further information, contact:

See section D in FSC 21/2004

The Firemen's Pension Scheme (Amendment) Order 2004

- 1.1 The Firemen's Pension Scheme (Amendment) Order 2004 (SI 2004 No 1912) sets out amendments to the Firefighters' Pension Scheme (FPS). It was laid before Parliament on Wednesday 28th July and will come into force on the 13th September 2004. Some of the provisions, mainly those concerning maternity, paternity and adoption leave have retrospective effect.
- 1.2 Changes were needed to meet existing legal requirements and to avoid possible claims of discrimination. Although many of the changes were identified prior to the modernisation programme, they should help ensure that the current Pension Scheme is flexible enough to deal with changes to the service overall prior to the introduction of a new pension scheme. They should also help management of response to the extension of the Disability Discrimination Act 1995 (DDA) to the Fire and Rescue Service.

The key changes include:

- A change in the definition of firefighter allowing members who are unfit for operational firefighting duties to remain in the pension scheme if they undertake roles other than fighting fires provided there is no break in continuity of appointment. At present, a firefighter who is permanently disabled for firefighting must be retired and the Fire and Rescue Authority (FRA) have no discretion to refuse to do so. This amendment comes into effect on 13 September 2004. It is our view that this change cannot be applied to scheme members who have retired before that date (i.e. whose pensions are already vested). It should also help FRAs make any "reasonable adjustment" required by the DDA.
 - The extension of the FPS to recognise part-time service by regular firefighters.
 - An obligation on FRAs to use independent medical assessment before approving applications for early retirement on ill health grounds.
 - A revision of the responsibilities of Medical Appeal Boards and how costs might be apportioned in the future when boards are cancelled or postponed at short notice.
 - Incorporation of retrospective amendments for maternity leave requirements from 23 June 1994 and new paternity and adoption requirements from 8 December 2002.
- 1.3 A full list of the amended rules together with an explanation of their purpose is included at Annex A.
- 1.4 The Firemen's Pension Scheme (Amendment) Order 2004 will require pension administrators to review their current procedures to take account of the rule changes listed in Annex A. Further information on implementing the key changes is included at Annex B. A revised Firefighters' Pension Scheme Commentary will be available on the ODPM website shortly.

2.0 Circulars Cancelled

2.1 This circular cancels:- FSC 9/2003 - Part A and FSC 14/2004 - Part B.

Martin Hill
Pensions and Special Projects
Fire, Legislation, Safety and Pensions Division

Annex A

THE FIREMEN'S PENSION SCHEME (AMENDMENT) ORDER 2004

The Firemen's Pension Scheme (Amendment) Order 2004 amends the current Firefighters' Pension Scheme (FPS). Paragraph numbers relate to the amendment order which can be viewed either via the ODPM website or the Stationery Office website (www.legislation.hmso.gov.uk/si/si2004/20041912.htm).

Rule A7 (Paragraph 1)- makes provisions for service as a part-time firefighter to count as whole-time when calculating pensionable service.(Please refer to guidance in Annex B)

Rule A8 (Paragraph 2) - This allows for contributions paid under Rule G2A to be refunded if a refund of contributions is permissible on leaving the FPS.

Rule A9 (Paragraph 3) - The expression "part-time member of a brigade" in this rule which explains qualifying injuries has been amended to "retained or volunteer member of a brigade" in order to avoid confusion on the introduction of provisions for part-time regular firefighters.

Rule A10 (Paragraph 4) – In determining whether a disablement is permanent a FRA will have to have regard as to whether the disablement is likely to continue until the date the firefighter would otherwise have been compulsorily retired in accordance with Rule A13.

Rules A13 and A14 (Paragraph 5 and 6) - This removes reference to "whole-time" firefighters and with effect from 13 September 2004 replaces it with "regular" firefighters. This will encompass part-time regular firefighters and was made to reflect the amendment to the definition of "regular firefighter", and amendments to allow part-time regular firefighters to participate in the FPS.

Rule B5 (Paragraph 7) - This amendment prevents service where a firefighter has opted not to pay pension contributions during additional unpaid maternity leave and/or additional unpaid adoption leave from being counted as pensionable service when determining entitlement to a deferred pension.

Rule B7 (Paragraph 8) - This clarifies that the "30 years' service" mentioned in Rule B7(5)(a) means 30 years' pensionable service.

Rule B9 (Paragraph 9) - This removes the requirement to demonstrate "good health" before a notice of allocation will be accepted (which could prevent all those retiring on health grounds from allocating). It has been replaced with a requirement to demonstrate normal life expectancy. It also removes the option to allocate when a firefighter is first eligible to retire; allocation will not now be permitted until the firefighter actually does retire. In the event of the named beneficiary predeceasing the fire pensioner, any portion allocated on or after 13 September 2004 can now be restored to the fire pension from the date of the nominee's death. (Please refer to the guidance in Annex B)

Rule B13 (Paragraph 10) - This ensures that any awards made to regular firefighters will be adjusted to account for any period of part-time service and

will be calculated in accordance with the formula in Schedule 2 Part VIA. (Please refer to guidance in Annex B)

Rule C1 (Paragraph 11) - This reduces the period of pensionable service required for entitlement to a spouse's ordinary pension from 3 years to 2 years.

Rule C6 (Paragraph 11) - This reduces the period of pensionable service required for entitlement to a widow's requisite benefit from 3 years to 2 years.

Rule F1 (Paragraph 12) - This requires a FRA to issue a firefighter with a certificate of pensionable service if he/she can count a period of maternity, paternity or adoption leave as pensionable service under Rule F2A.

Rule F2 (Paragraph 13) - Where unpaid additional maternity and unpaid additional adoption leave has been taken and the firefighter has opted not to pay pension contributions during this period, this service will not count as pensionable service.

Rule F2A (Paragraph 14) - Provides for ordinary maternity leave, paid additional maternity leave, paternity leave, ordinary adoption leave, paid additional adoption leave to count as pensionable service, and for unpaid additional maternity and adoption leave to count as pensionable service where the firefighter opts to pay the relevant pension contributions during these periods.

Rule G1 (Paragraph 15) - This amends the definition of pensionable pay so that it will be the part-time pay in the case of a part-time regular firefighter, and the pay actually received in the case of maternity, paternity and adoption leave.

Rule G2A (Paragraph 16) - This sets out the terms under which a firefighter can pay contributions in order that periods of additional unpaid maternity and adoption leave can count as pensionable service.

Rule G7 (Paragraph 17) - This sets a requirement for any lump sum relating to a payment of periodical contributions for increased benefits to be paid within 3 months of the commencement of periodical contributions.

Rule H1 (Paragraph 18) - This provides that when determining medical issues, the FRA must obtain a written opinion from an independent qualified medical practitioner selected by them. It also makes the opinion of the independent qualified medical practitioner binding on the FRA. (Please refer to guidance in Annex B)

Rule H2 (Paragraph 19) - This extends the responsibility of a board of medical referees to any issues covered by questions (a) to (f) of Rule H1(2) and does not limit to medical issues only.

Rule I3 (Paragraph 20) - This allows for an award to be made to a qualifying child on the death of a serviceman/servicewoman where he/she died during his service or from an injury sustained during that service.

Rule J3 (Paragraph 21) - This rule allows a FRA to grant an employee who is not a firefighter, an injury award. It was previously restricted to whole-time

employees; it has now been extended to part-time employees. Also, the limitation on payment to the child of a female employee has been removed.

Rule J4 (Paragraph 22) - This amends the reference to "a part-time member" to "a retained or volunteer" member to avoid confusion with part-time regular firefighters. The limitation on payment to the child of a female retained or volunteer firefighter has been removed. The entitlement of a surviving spouse to the 13 week "top-up" payment has been restored (with retrospective effect).

Rule K1 (Paragraph 23) - This enables a FRA to review all cases where a firefighter has received early payment of a deferred pension due to permanent disablement.

Rule K4 (Paragraph 24) - This ensures that a firefighter receiving a widow(er)'s pension under the FPS (following the death of his/her spouse who was also a firefighter) cannot have that pension withdrawn during service as a regular firefighter.

Rule L4 (Paragraph 25) - This enables children whose parents were both firefighters to receive appropriate benefits relating to the service of both parents.

Schedule 1 (Paragraph 26) - This amends the definition of "regular firefighter" in the Glossary of Expressions so that it can mean a whole-time or part-time member of a brigade, but would exclude a retained or volunteer member. This amendment also allows a regular firefighter who is appointed on terms under which he or she is, or may be, required to engage in firefighting to remain eligible for the FPS if disablement means that the person can no longer undertake operational duties but would still be fit, and is required, to undertake other duties of his/her role. (There is a provision that there should not be a break in continuity of appointment.) New definitions have been added for "independent qualified medical practitioner", "adoption leave", "maternity leave", "paternity leave", "retained member of a brigade" and "volunteer member of a brigade".

Schedule 2 (Paragraph 27, 28, 29 and 30) - This provides for pension awards in Parts I, II, III, V and VI of Schedule 2 to be calculated with reference to a new Part VIA (calculation of awards for part-time service) where all or part of the service has been part-time. This ensures that average pensionable pay used to calculate awards is reflective of the whole-time and part-time service during the pension period thus avoiding a "cliff-edge" effect where there is a change of work pattern toward the end of service. (Please refer to guidance in Annex B)

Schedule 3, 4 and 5 (Paragraph 31,32,33,34,35,36,37,38 and 39)

This provides for awards of pensions on death for spouses, children and adult dependent relatives to be calculated with regard to Schedule 2 Part VIA where all or part of the firefighter's service was part-time. (Please refer to guidance in Annex B)

Schedule 6 (Paragraph 40 and 41) - This requires payments made to restore service under rule F4(4) to be based on whole-time pensionable pay (even where the firefighter is part-time). It also requires that the pay used for assessing a service credit on receipt of a cash equivalent transfer should be

whole-time pensionable pay. The service credit will count as whole-time service.

Schedule 9 (Paragraph 42) - Amended to differentiate between interview and medical examination by the medical referees and specifies the sum to be paid by the appellant in respect of medical board fees where an appeal is withdrawn within ten days of the appointed date. (Please refer to guidance in Annex B)

Schedule 9 (Paragraph 43) - Allows for a party, before an appeal tribunal, to be represented by an authorised advocate.

Annex B

GUIDANCE ON IMPLEMENTING KEY CHANGES

(a) Amendment to the definition of "regular firefighter" (Schedule 1, Part 1)

Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of "regular firefighter" includes a requirement to engage in firefighting. This remains a term of eligibility for joining the FPS. However, the definition has been amended to allow a firefighter who subsequently becomes permanently disabled for firefighting while remaining fit for other related duties to continue as a member of the FPS. This is on condition that there has been no break in service. Consequently if a FRA are of the view that the retention of a firefighter would be of value to the service, redeployment to other duties, as appropriate to the role of a firefighter, should be considered and would be allowable under FPS rules. If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award.

(b) Making the pension scheme accessible to part-time firefighters.

The current provisions of the FPS do not accommodate regular firefighters who work part-time hours. The Firemen's Pension Scheme (Amendment) Order 2004 gives part-timers access to membership of the FPS from 13th September 2004.

Most pension schemes which make provisions for part-timers simply treat a period of part-time service as a proportion of whole-time in the calculation of benefits. If this principle was applied in the FPS, its fast accrual pension structure would not allow a fair and consistent outcome because the pension would reflect whether the part-time service fell in the first 20 years or later. Also, care has to be taken to ensure entitlement to benefits is not distorted, e.g. a half-time worker should not have to wait 40 years for fast accrual to commence, and any ill-health enhancement should be an equitable proportion of that awarded to a whole-time firefighter.

Consequently the starting point for assessing a pension for a regular firefighter with a period of part-time service will be to treat him/her as if all pensionable service counts at whole-time length and average pensionable pay will be the whole-time equivalent. This means that qualification for benefits, the reckoning of fast accrual service, and any ill-health enhancement will all be based on the same terms as would apply to a firefighter who has been whole-time throughout. Having assessed the pension on these terms account is then taken of part-time service. Whole-time and part-time service is added together and shown as a fraction of total service if all counted as whole-time. The whole-time pension is multiplied by this fraction to produce the "part-time" pension.

When calculating the pension of a firefighter who has part-time service the whole-time equivalent should be calculated in accordance with Schedule 2 of the Firemen's Pension Scheme Order 1992. In order to adjust this whole-time equivalent pension to allow for any part-time service this should then be applied to the formula in Schedule 2 part VIA of the Firemen's Pension Scheme (Amendment) Order 2004 as below.

$$A \quad \times \quad \frac{(B + C)}{D}$$

where

A is the pension of the firefighter as calculated in accordance with Schedule 2 of the Firemen's Pension Scheme Order 1992. This calculation will treat all service completed by the firefighter as whole-time.

B is the period in years of pensionable service as a whole-time member of a brigade.

C is the period in years of pensionable service as a part-time member of a brigade expressed as a fraction of whole-time service.

D is the pensionable service.

The most straightforward method of assessing A, B and C would be -

For "B": Look at the calendar dates of whole-time service and count in full as years and days. Add on any period of service credit derived from a transfer value received from another pension scheme (this counts at whole-time in accordance with Schedule 6 Part II, paragraph 4).

For "C": Look at the calendar dates of part-time service and pro rate the period of years and days according to the hours worked as a proportion of whole-time for that period.

For "D": Look at the calendar dates of the total period worked and count in full as years and days. Add on any period of service credit derived from a transfer from another pension scheme (as added to "B").

Note that any 60ths "purchased" under Part G do not get included in the formula. These do not count as service nor pensionable service. They are not included in the benefit assessed as "A", nor in "B", "C" or "D". Benefits derived from purchased 60ths would be added to the pro rata benefit derived from $A \times \frac{(B + C)}{D}$.

The limit of 30 years applied to "(B + C)" and to "D" is to prevent any distortion of benefits. The pensionable service used in the calculation of "A" would have been limited to 30 years.

It is important, therefore, that accurate records are kept of contractual hours worked and changes in work patterns to ensure that pension awards are calculated accurately.

All pensions due to a firefighter are based on this principle as is the injury gratuity. Widow(er)s' and children's benefits which use the firefighter's pension as the "base" for calculation will reflect the principle as will the injury-based dependants' special awards. However, other gratuities which are based on pensionable pay or average pensionable pay will not use the principle, nor would the death grant. These would be based on the actual pensionable pay as on the last day of service or the actual average pensionable pay, according to the requirements of the relevant rules.

(c) Ensuring that a FRA seeks the opinion of an independent qualified medical practitioner before making a decision relating to ill-health/injury retirements.

In FSC 3/2003, which was issued on 17 January 2003, we advised Fire Authorities of the intention to amend the firefighters' pension scheme to make it mandatory upon employers to seek the opinion of an independent qualified medical practitioner before making a decision on retirement relating to ill-health and injury. We also encouraged FRAs to put the necessary practices in place on a voluntary basis.

Rule H1(2) of the FPS sets out the questions that should be addressed for determining aspects of eligibility for, and possibly the amount of, that type of award. The FRA will need professional help when considering these questions. Consequently Rule H1(2) requires the FRA, before arriving at their determination under Rule H1(1), to obtain the written opinion of an independent qualified medical practitioner selected by them. Having selected an independent qualified medical practitioner and obtained his/her opinion, that opinion is binding on the FRA. This means that the FRA cannot seek alternative opinions if they are not content with the one provided. This does **not** mean that the independent qualified medical practitioner decides the award. The power to determine the award rests with the FRA under Rule H1(1). To decide the award they will take non-medical issues not covered by the opinion into account, too.

"Independent qualified medical practitioner" is defined in Schedule 1 Part I as a medical practitioner holding a diploma in occupational medicine or an equivalent qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State.

A medical practitioner who does not satisfy these qualification requirements cannot give the written opinion required for the determination of an award under the FPS.

To demonstrate independence, Rule H1(2A) requires the medical practitioner to certify, in the written opinion, that he/she –

- has not previously advised, or given an opinion on, or otherwise been involved in, the particular case for which the opinion has been requested, and
- is not acting, and has not acted at any time, as the representative of the (FPS) member, the FRA, or any other party in relation to the same case.

This would mean, for example, that if the FRA's medical officer has been advising on a case up to the point of retirement, he/she cannot supply the opinion required under Rule H1(2), even if he/she holds the required occupational health qualifications.

(d) The ability to reclaim costs from appellants if appeals are withdrawn later than 10 days prior to the hearing date

In FSC 4/2003 which was issued on 17 January 2003, we advised FRAs that in circumstances where an appellant requests a postponement/cancellation within 10 working days of the hearing date the appellant could be asked to

pay costs. This advice should now be replaced as a result of Schedule 9(b) of the Amendment Order 2004 which gives FRAs the statutory discretion to require an appellant to pay the costs of an appeal hearing where the appellant has withdrawn their appeal within 10 working days prior to the appeal hearing date.

(e) Maternity, Paternity and Adoption Leave

All pension schemes have to comply with certain requirements in respect of maternity, paternity and adoption leave. The maternity leave requirements commenced on 23 June 1994 and paternity and adoption leave requirements on 8 December 2002 (for children with an expected birth or placement date of 6 April 2003) and so the amendments to the FPS for these provisions are applied retrospectively. The amendments reflect the statutory provisions. They apply regardless of the national or local arrangements for these types of leave for firefighters.

Any period of statutory paternity leave, or ordinary maternity leave, or ordinary adoption leave will count in full as pensionable service. Pension contributions are paid on any pay received (including pay under the Social Security Contributions and Benefits Act 1992). If no pay is received, contributions will not be paid but the period will still count as pensionable. Any period of paid additional maternity or adoption leave will count as pensionable service on similar terms. If any of these periods fall within the year used for working out average pensionable pay for benefits, the pay used will be the amount that would have been received, had the person not been absent.

For any period of unpaid maternity or adoption leave the firefighter will have the opportunity to pay contributions. They would be assessed on the pay the person was receiving immediately before the unpaid period commenced. If contributions are paid, the period counts as pensionable service, average pensionable pay if relevant would be the pay the person would have received but for the absence. If contributions are not paid, the period will not count as pensionable service and average pensionable pay will not take the period into account.

If the FRA extends the period of leave beyond its statutory limits it would be treated like any other period of paid or unpaid absence. The special maternity, paternity and adoption provisions would not apply.

Maternity leave would apply to female firefighters only, but paternity and adoption leave can apply to both male and female firefighters.

(f) Change in the Allocation provisions

Rule B9 of the FPS enables members to surrender part of their own pension during their lifetime to provide, on their death, a pension for their spouse or dependant. This allocation has the effect of reducing the member's actual pension by the amount allocated. Under the current provisions of the pension scheme, if the nominated beneficiary dies before the member then this reduction in pension continues to have effect.

The Firemen's Pension Scheme (Amendment) Order 2004 provides for any reductions of member's pension relating to allocation to cease where the nominated beneficiary dies before the pensioner.

This will only apply in cases where a pension becomes payable on or after 13 September 2004.