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Dear Sir/Madam

## **SCOTTISH FIRE SERVICE CIRCULAR 19/2005**

### **AMENDING ORDERS TO THE FIREFIGHTERS PENSION SCHEME (FPS)**

This circular advises on two amending orders that have come into force from the 4<sup>th</sup> and 5<sup>th</sup> of December respectively. The first Order (SSI 2005/566) confirms the changes proposed in the consultation letter of 26 September issued by this Agency and a summary of the changes are listed below at section A. Fire and Rescue Authorities should note that the proposed amendment to include a “scheme Administrator” has been postponed pending further guidance from HM Revenue and Customs on issues relating to tax simplification.

The second Order which has been prepared and introduced by the Office of the Deputy Prime Minister (ODPM) (SI2005/3228) introduces the changes necessary resulting from the introduction of civil partnerships from 5 December. These proposals were also included in the letter of 26 September. The original devolved enabling powers of section 26 of the 1947 Fire Services Act, as preserved, do not include making provisions for civil partners. Consequently, the necessary changes to the FPS in Scotland have been included in the ODPM Order. Work is currently in progress to arrange for the devolved powers to be extended to include civil partnerships so that Scottish Ministers can make any necessary future provision for civil partners in the FPS in Scotland.

#### **A: The Firefighters Pension Scheme (Amendment) (Scotland) Order 2005.**

The Firefighters' Pension Scheme (Amendment) (Scotland) Order 2005 (SSI 2005 No) amends the FPS. It came into force on the 4 December 2005. Some of the provisions have retrospective effect. A copy of the Order can be obtained from the following link [SSI 2005/566](#)

The changes made to the Firefighters' Pension Scheme (FPS) are outlined below. Some have been made as a consequence of the Fire (Scotland) Act 2005 and others to address issues and anomalies that have arisen since the last amendment order in 2004. These amendments have been the subject of extensive consultation with the Firefighters' Pension Committee (FPC).

In relation to the first amending Order (SSI2005/566) the following changes are made:

### **1. Changes in terminology as a consequence of the Fire (Scotland) Act 2005**

The Fire (Scotland) Act came in to force on 2<sup>nd</sup> August 2005. The Act changed terminology relating to the Fire and Rescue Service. The term "Fire Brigade" has been replaced by the term "Fire and Rescue Service" (FRS) and the term "Fire Authority" has been replaced by "Fire and Rescue Authority" (FRA). For the purposes of the FPS, the terminology throughout has been amended to reflect that a firefighter is employed by a Fire and Rescue Authority but works within the Fire and Rescue Service maintained by a Fire and Rescue Authority.

This amendment takes effect from 2<sup>nd</sup> August 2005.

### **2. Changes to the grading structure in the Fire and Rescue Service**

The Fire Service Appointments and Promotion (Scotland) Regulations 2004 (SSI 2004/527) introduced a new grading structure for the Fire and Rescue Service. An effect of the regulations is that a structure based on "rank" has been replaced by one based on "role". As a result, references in the FPS to "rank" have now been replaced with "role".

This amendment will take effect from 1 October 2004.

### **3. Replacement of compulsory retirement age**

Retaining the compulsory retirement ages is discriminatory and they have been removed from the Scheme. This means that firefighters will not be compelled to retire at age 55 (60). Scheme benefits will still, however, be limited to thirty years service (40/60ths). Rule A13 now provides for a "normal pension age" which is 55, regardless of role. Continued employment will no longer depend upon age but upon fitness to undertake the relevant role.

The change does not affect rights to draw pension from age 50: it means that members may continue in the pension scheme and accrue additional benefits after age 55 up to a maximum of thirty years.

The amendment protects the position of those at Station Manager B and above who were subject to a compulsory retirement age of 60 and whose ill-health enhancement has been based on a normal pension age of 60.

This amendment will take effect from 4 December 2005.

### **4. Prevention of duplication of pension payments**

Retained firefighters are not eligible for membership of the FPS but they are entitled to benefits where they suffer a qualifying injury. Under Rule J4 of the FPS, a retained member of a brigade who retires due to permanent disability occasioned by a qualifying injury is treated as a regular firefighter for the purposes of Rules B3 (ill-health award) and B4 (injury award). Furthermore, under Rule J4(7), any award will be calculated as if the retained firefighter held the rank of a regular firefighter; had the same service in that rank; and was entitled to reckon as pensionable service a period equal to the retained service.

Some FRAs are employing regular firefighters as retained firefighters. The retained employment may either be with the same FRA or with a second FRA. Where a regular/retained firefighter suffers a qualifying injury attributable to their retained service, or where the injury is attributable in part to both the regular and the retained service, the current provisions could result in the payment of two pension awards.

An amendment has been made to protect the FPS from duplication of payment in these circumstances on the basis that, although there may be two separate employers or contracts there is, in effect, a single pension scheme. The amendment to the Scheme provides for a single set of benefits to be payable in these situations. The FRA employing the scheme member as a retained firefighter will be responsible for financing the injury elements i.e., the gratuity and injury pension, and the FRA employing the member as a regular firefighter will be responsible for the ill-health pension element. Fire and Rescue Authorities would need to make notional calculations based on both regular and retained status and, where there is a difference, the greater award would be payable. This amendment also sets out the responsibility for payment if more than one FRA is involved.

This amendment will take effect from 4 December 2005.

## **5. Equal treatment of widows and widowers**

The FPS currently provides different treatment for widows and widowers in respect of survivor benefits. Although the definitions of certain expressions in the 1973 Scheme were amended in 1984 so that “widow” included “widower” and “wife” included “husband”, no amendment was made to the death benefit provisions (because at that time there were few female firefighters). The amendments made by this Order equalise treatment of widows and widowers and are preparatory to forthcoming amendments required by the Civil Partnership Act 2004.

This amendment will take effect from 1 March 1992.

## **6. Early payment of deferred pension**

The FPS was amended in 2004 to allow for a member to remain a member if they are employed on duties appropriate to the role as a firefighter other than engaging in firefighting. The amendment now made by paragraph 15(d) of the Schedule to the Order removes an anomaly in the FPS that allowed a member found unfit for firefighting, but able to carry out other duties appropriate to the role, to resign prior to redeployment with a deferred pension and immediately request early payment of the deferred pension on the grounds that they are permanently unfit for firefighting.

This amendment will have effect from 4 December 2005.

## **7. Pensionable pay and salary sacrifice**

Salary sacrifice schemes are permitted by HM Revenue and Customs and allow an employer to offer an employee certain benefits, e.g. childcare, in return for giving up part of their salary. For the employee there are savings of National Insurance contributions and income tax. As a consequence of the establishment of such schemes, pensionable pay of a regular firefighter should be taken to be the amount determined in relation to the performance of the duties of the role rather than the pay received. FRAs have already received advice on this point but the amendment made by paragraph 47 of the Schedule to the Order will ensure that authorities which have introduced salary sacrifice schemes can collect pension contributions based on the amount of pay before reduction for the sacrifice, and thus preserve full pensionable benefits.

This amendment has effect from 2 August 2005.

## **B: The Firefighters' Pension Scheme (Civil Partnerships Amendments) (England and Scotland) Order 2005**

The Civil Partnership Act 2004 came into force on the 5 December 2005. This has created an obligation on the Firefighters' Pension Scheme (FPS) to provide survivor benefits to same-sex partners of scheme members who have registered a civil partnership on the same basis as for spouses. Amendments to the FPS were therefore necessary and have been made by the above Order, a copy of which can be obtained from the following link [SI2005/3228](#)

The amendments included in this Order are all consequential on the Civil Partnership Act 2004. The first Civil Partnerships will be registered on 21<sup>st</sup> December 2005 after the required 15 day waiting period has passed. In a very few cases, where special circumstances apply, civil partnerships can be registered from 5<sup>th</sup> December.

The Government has decided that survivor benefits for civil partners must be provided on the basis of service from 6<sup>th</sup> April 1988 at cost to employers. This was the date from which survivor benefits provision for male and female dependants were equalized for all pension schemes. The amendments to the FPS have been the subject of consultation with the Firefighters' Pension Committee

Administrators should note that when calculating a civil partner's award under Rules C1 (Ordinary pension), C2 (Special award) and C4 (Accrued pension) of the scheme, where the deceased member has service before the 6<sup>th</sup> April 1988, the pension will need to be pro-rated to take account of the effect of double accrual on total pensionable service. The civil partner's award should be calculated in the same way as for a spouse's award and then pro-rated according to the formula below.

$$\text{Civil Partners Award} = \text{Spouse's Award} \times \frac{\text{Members service after 5<sup>th</sup> April 1988}}{\text{Member's total service}}$$

The main amendments are as follows:

### **Schedule 1**

**Rule A3 - Exclusive application to Firefighters** - to allow the scheme rules to apply to civil partners.

**Rule B9 - Allocation** - to allow members to allocate part of their pension to civil partners.

**Rule C1** - to provide an ordinary pension for civil partners, however only service accrued by the deceased member after 5<sup>th</sup> April 1988 will be reckonable (please refer to formula in Para 1.5).

**Rule C2** - to provide a special award for civil partners, however only service accrued by the deceased member after 5<sup>th</sup> April 1988 will be reckonable (please refer to formula in Para 1.5).

**Rule C3** - to provide an augmented award for civil partners.

**Rule C4** - to provide an accrued pension for civil partners, however only service accrued by the deceased member after 5<sup>th</sup> April 1988 will be reckonable (please refer to formula in Para 1.5).

**Rule C5** - to provide a pension for civil partners where the civil partnership was formed after retirement, however only service accrued by the deceased member after 5<sup>th</sup> April 1988 will be reckonable.

**Rule C6** - to provide a requisite benefit and temporary pension for civil partners, however only service accrued by the deceased member after 5<sup>th</sup> April 1988 will be reckonable.

**Rule C7** - to provide an award for civil partners where no other award is payable in the same manner as for spouses.

**Rule C8** - to provide an award for civil partners in the same way as spouses, where the civil partners were living apart, however only service accrued by the deceased member after 5<sup>th</sup> April 1988 will be reckonable. Under this rule, the FRA has the discretion to pay other awards to spouses and civil partners. When exercising this discretion for civil partners, the FRA should have regard to the limit on reckonable service to after 5<sup>th</sup> April 1988.

**Rule C9** - so that the scheme treats a civil partner who 'dissolves' or 'subsequently forms' a civil partnership in the same way as a spouse who 'divorces' or 'remarries'.

**Rule C10** - so that the scheme treats civil partners and spouses that are 'pension debit members' in the same manner.

Elsewhere, terminology in the scheme has been amended to ensure that provisions refer to civil partners, as appropriate.

### **Schedule 3**

The pension sharing rules for Scotland differ in both placement in the list of scheme rules and wording from those in England and as a result are identified separately under schedule 3. Similarly amendments applicable to England only are outlined in schedule 2.

Yours faithfully



Jim Preston