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Dear Colleague

SCOTTISH FIRE AND RESCUE SERVICE CIRCULAR No 14/2007

FIREFIGHTERS' PENSION SCHEME (FPS)

NEW FIREFIGHTERS' PENSION SCHEME (NFPS)

1. Background

1.1 We are aware that Fire and Rescue Authorities (FRA) are introducing arrangements where firefighters undertake duties in addition to their role as a regular firefighter. These arrangements may be

- the award of a second, separate, contract e.g. a regular firefighter having a second contract as a retained firefighter or trainer;
- extension of the first contract of employment to cover supplementary duties, e.g. Day Crewing; USAR teams;
- extra paid work on a "voluntary" basis, e.g. working with young people.

This list is not exhaustive. Some second contracts, for example for retained duties, may involve a firefighter being employed by more than one FRA.

1.2 This circular gives advice on the implications for compensation scheme benefits arising from different contractual arrangements.

1.3 Access to benefits from the Firefighters' Compensation Scheme (FCS) follows a decision by a FRA that a person is permanently disabled if the infirmity was caused by a qualifying injury. A qualifying injury is defined in the scheme and is an injury received by a person, without his/her own default, in the exercise of his/her duties as a firefighter.



- 1.4 A firefighter is defined in the scheme as a person who is employed by a FRA as a regular (whether wholetime or part-time), retained or volunteer firefighter and on terms under which he/she may be required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his/her role as a firefighter (whether instead of, or in addition to, engaging in firefighting).
- 1.5 Prior to the 6th April 2006 and the introduction of the New Firefighters' Pension Scheme (NFPS), retained firefighters were not eligible for membership of a pension scheme but where a retained firefighter died or was injured as a result of a qualifying injury, they were eligible to be treated as if they were a wholetime regular firefighter member of the Firefighters' Pension Scheme (FPS) for the purposes of compensation and related ill-health benefits (i.e. with the equivalent pensionable pay and service of a wholetime regular firefighter). When the NFPS was introduced all retained firefighters who were recruited before 6th April 2006 were given a protected right to these benefits regardless of whether they subsequently joined the NFPS.
- 1.6 However retained firefighters recruited on or after 6th April 2006, including regular firefighters taking up a second contract of employment as a retained firefighter on or after that date, are eligible for membership of the NFPS and do not have this protection. They automatically become members of the NFPS unless they make a contributions election under Part 2, rule 5 (opt out) and are treated on the same basis as other part-time employees for the calculation of pension and compensation benefits. If they are permanently disabled as a result of a qualifying injury they are eligible to receive compensation benefits based on their retained pay and service (i.e., pro-rated to that of an equivalent whole-time firefighter).

It is our view that as a general principle any injury award follows the contract under which the qualifying injury was received.

2. Second contracts of employment

- 2.1 Where a firefighter is currently working under a second contract or a FRA is considering offering a second contract of employment to a firefighter, consideration must be given to the implications with regard to pension and compensation scheme rules outlined above. If the duties of the second contract do not include terms under which the person may be required to engage in firefighting then the eligibility criteria for membership of the NFPS (or if given the second contract before 6th April 2006, the FPS) will not be satisfied and there would be no eligibility for death or injury benefits in the event of the person receiving an injury. The contract of employment may attract pension and compensation benefits from the Local Government Pension Scheme and FRAs may wish to investigate this option but must, in any case, make the position clear to the firefighter.
- 2.2 Where the duties of a second contract satisfy the criteria for membership of the NFPS under Part 2, rule 1(1) (or the FPS under Schedule 1) which includes a duty to engage in firefighting if required, the firefighter would become eligible for compensation benefits in the event of death or permanent disablement from a qualifying injury. If that injury was solely attributable to the duties under the second contract then the injury benefits would be based on the pay and service under the second contract. For example, a regular wholetime firefighter, who took up a second contract as a retained firefighter on or after 6th April 2006 and received a qualifying injury attributable to the second contract, would be eligible for compensation benefits based on the retained pay and service only (see paragraph 4.2 below).



- 2.3 It has been brought to our attention that some FRAs have advised their firefighters that if they were to suffer adverse financial effects by receiving less than wholetime compensatory awards as result of suffering a qualifying injury under their second contract then the FRA would make good any shortfall. It is our view that such payments would be *ultra vires*.

3. Secondary duties

- 3.1 FRAs should also be aware of the implications for compensatory awards where they require firefighters, or ask firefighters to volunteer, to undertake additional or “secondary” duties as part of their primary contract of employment as a firefighter. These situations could include the retained element of Day Crewing which is now pensionable under the NFPS and certain of the USAR arrangements.
- 3.2 Where a firefighter suffers an injury during the execution of these additional duties, the injury will be considered a qualifying injury provided the duties fall within the role of firefighter and the primary contract includes terms under which the person may be required to engage in firefighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his/her role as a firefighter (whether instead of, or in addition to, engaging in firefighting). As the injury will have occurred under the primary contract, compensation benefits will be calculated on the basis of pay and service in that contract
- 3.3 We understand that some authorities may be offering firefighters work outside their contracts of employment on a voluntary basis: firefighters are paid. Unless the duties are within the role of firefighter we would not consider that an injury incurred on such duties could be regarded as a qualifying injury. Nor could any pay for such duties be pensionable.

4. Ill-health pensions and second contracts

- 4.1 A firefighter who is a member of the FPS or the NFPS who is permanently disabled is entitled to an ill-health pension. Where a firefighter has two contracts and has two pension scheme memberships, for example FPS or NFPS membership in respect of service as a regular firefighter and NFPS membership as a retained firefighter, they would be eligible for two ill-health pensions.
- 4.2 Using the example of a wholetime regular firefighter member of the FPS who has a second contract (taken up on or after 6th April 2006) as a retained firefighter and is a member of the NFPS, if he receives a qualifying injury in the retained employment he would receive an injury award and an ill-health pension based on pay and service as a retained (pro-rata to wholetime). If the decision on permanent disablement is applied also to the regular employment (and our expectation is that it would) there would be entitlement to a second ill-health pension based on pay and service as a regular firefighter. If the firefighter was not a member of the NFPS (an “optant out”) in respect of the retained service, he would still receive an injury award from the FCS as a retained plus an ill-health pension as a regular.

5. Second contracts - combinations of ill-health and compension awards



- 5.1 Scottish Fire Service Circular 3/2004, issued on 20 May 2004 advised FRAs on the implications for the FPS of employing firefighters on second contracts as retained firefighters. The situation has become more complex following the introduction of the NFPS and there is now the potential for firefighters to have more than one scheme membership where they have more than one contract.
- 5.2 The FCS includes provisions to prevent the duplication of compensation awards i.e, to ensure that only one compensation award is payable in respect of a particular qualifying injury (but allows for single awards to be apportioned between more than one FRA if necessary). Both the FPS and the NFPS include provisions setting out responsibility for payment of ill-health awards.
- 5.3 Identified in the attached annex are some examples of combinations of primary and secondary contracts and the awards that would be payable in each case.

6. Further Guidance

6.1 The following guidance has been available on our website for some time:

- [Firefighters' Compensation Scheme for retained firefighters appointed before 6 April 2006](#)
(pdf 161Kb)

A guide to the FCS for retained firefighters appointed before 6 April 2006.

- [Firefighters' Compensation Scheme for retained firefighters appointed after 5 April 2006](#)
(pdf 168Kb)

A guide to the FCS for retained firefighters appointed after 5 April 2006.

- [Firefighters' Compensation Scheme \(Scotland\) 2006 \(NFPS 2006\)](#) (pdf 180Kb)

A guide for regular firefighters who are members, or optants-out, of the New Firefighters' Pension Scheme 2006 (Final).

- [Firefighters' Compensation Scheme \(Scotland\) 2006 \(FPS 1992\)](#) (pdf 188Kb)

A guide for regular firefighters who are members, or optants-out, of the Firefighters' Pension Scheme 1992.



7. Conclusion

- 7.1 The situation is complex and FRAs need to ensure that, when offering firefighters second contracts or extensions to existing contracts to perform secondary duties, they explain the implications for the employee's pension and injury benefit arrangements.

Yours sincerely



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Policy Manager