

**X FIRE AND RESCUE AUTHORITY**

**A GUIDE TO  
THE FIREFIGHTERS'  
COMPENSATION SCHEME (SCOTLAND)  
2006**

**for retained firefighters  
appointed before 6 April 2006**

August 2007

## BACKGROUND

This booklet is a guide to the injury and compensation provisions contained in the Firefighters' Compensation Scheme (Scotland) Order 2006 which came into force on 6 April 2006. It explains how those provisions apply to retained firefighters provided they were appointed before 6 April 2006 and have had no break in service since that date. These retained firefighters have special protected rights under the Compensation Scheme which allow certain compensation benefits to be assessed on similar principles to those that would apply to whole-time regular firefighters. Retained firefighters appointed on or after 6 April 2006 will be treated as part-time firefighters under the Compensation Scheme.

Where this Guide refers to a "retained firefighter" it means a retained duty system firefighter, a day-crewing firefighter who undertakes retained duties, or a volunteer firefighter. Some of the other expressions used in the Guide have a special meaning in the Compensation Scheme. An explanation is given at the end of the booklet.

Separate guides explain how the provisions of the Compensation Scheme apply to –

- retained firefighters appointed on or after 6 April 2006;
- regular firefighters who are members of the Firefighters' Pension Scheme 1992 ("FPS") or who were entitled to be members but chose to opt out;
- regular firefighters who are members of the New Firefighters' Pension Scheme 2006 ("NFPS") or who were entitled to be members but chose to opt out;

You may also find it helpful to have at hand a copy of the Guide to the Firefighters' Pension Scheme 1992 and, particularly if you are a member of the NFPS, a copy of the Guide to the New Firefighters' Pension Scheme 2006 (with the additional Notes for retained firefighters) because the Compensation Scheme and Pension Schemes inter-relate with each other.

The Compensation Scheme Order contains –

- the injury award provisions previously contained in the Firemen's Pension Scheme Order 1992 – in April 2006 they had to be removed from the Order and placed in a separate Compensation Scheme so that the Firefighters' Pension Scheme could meet the requirements of HM Revenue and Customs; and
- the duty-related compensation provisions previously contained in the Fifth Edition of the Scheme of Conditions of Service ("Grey Book") – they had to be put in the Order to give them a statutory basis.

Injury awards are explained in Part 1 of this Guide, and duty-related compensation is explained in Part 2.

This Guide gives just a brief outline of the Compensation Scheme. It summarises the main rules which apply at the date shown at the foot of page 2, but nothing it contains can override the legislation under which the Scheme is made. In the event of a dispute or disagreement the rules and regulations which govern the Scheme would be used to reach a decision.

If you need further information about the Scheme or wish to discuss your personal circumstances, see the contact details given at the back of the booklet.

**A Guide to the Firefighters' Compensation Scheme  
for retained firefighters appointed before 6 April 2006**

This issue reflects the Scottish Scheme rules which apply at 1 January 2007

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**PART 1**  
**INJURY AWARDS**

## WHO IS COVERED BY THE INJURY AWARD PROVISIONS?

All of the following have cover for an injury award subject to satisfying the conditions for eligibility –

- a whole-time or part-time regular firefighter
- a firefighter undertaking retained duties
- a volunteer firefighter
- other employees of a fire and rescue authority in certain circumstances and at the discretion of the authority
- a surviving spouse or civil partner or child of the above
- a dependent relative of a firefighter at the discretion of the fire and rescue authority.

Cover is also provided for firefighters who are called up for Reserve Forces Service.

Note that a firefighter does not have to be a member of the Firefighters' Pension Scheme ("FPS") or the New Firefighters' Pension Scheme ("NFPS") to have cover for an injury award under the Compensation Scheme. Optants-out have cover, too. Nor is there a minimum or maximum age for a firefighter's entitlement to an injury award.

Some firefighters may have cover in respect of both regular and retained duties and possibly under both the FPS and the NFPS. The FPS, NFPS and the Compensation Scheme contain rules which prevent the duplication of benefits in certain circumstances.

This Guide explains the provisions as they apply to, and in respect of, retained firefighters appointed before 6 April 2006 and who have not had any subsequent break in employment. Other guides set out the Compensation Scheme provisions for retained firefighters appointed on or after 6 April 2006 and for regular firefighters.

## ELIGIBILITY

To qualify for an injury award a firefighter must

- have retired, and
- be permanently disabled by an infirmity occasioned by a qualifying injury.

For a spouse, civil partner or child to qualify for an injury award as a dependant of a firefighter, the firefighter must have died from the effects of –

- a qualifying injury, or
- infirmity of mind or body occasioned by a qualifying injury.

Wherever a qualifying injury is mentioned in this Guide in the context of an injury award it means an injury received by a person without his or her own default in the exercise of his/her duties as a firefighter. The Compensation Scheme rules say that an injury will be treated as having been received without a person's default unless it is wholly or mainly due to his or her own "serious and culpable negligence or misconduct".

Permanent disablement for a retained firefighter with protected rights means "incapacity, occasioned by infirmity of mind or body, for the performance of duty" and which will continue at least to normal pension age, i.e. to age 55.

## DETERMINATION OF ENTITLEMENT TO AWARD: THE FIREFIGHTER

It is the fire and rescue authority that make a decision as to entitlement to award, but they must first obtain a medical opinion to help them decide relevant medical issues.

For a serving firefighter the question of disablement will also be used to decide capability for continuing in service and so it is usual for the authority to ask questions about the medical issues relating to an injury award at the same time as they seek an opinion on disablement for possible termination of employment on health grounds (or an award under the FPS or NFPS if the firefighter is a member). An injury award can also be considered for a firefighter who has left the Service on grounds other than disability but who has a post-retirement disablement which may be linked to a pre-retirement qualifying injury (often referred to as an "after-appearing" injury).

In order that there should be a standard approach to obtaining a medical opinion, model certificates and guidance notes have been provided by the Scottish Public Pensions Agency (SPPA) for fire and rescue authorities' use.

The fire and rescue authority will first have to decide if an injury sustained by a firefighter falls within the definition of a "qualifying injury" for injury award purposes. Sometimes this can be decided without medical assistance. For example, if the firefighter is injured in a car accident whilst on holiday and not in the exercise of duty this would not be a qualifying injury. But most cases are not so clear-cut. The authority may need a medical opinion to help them with this question. The other questions which must be referred for a medical opinion to help establish entitlement to, and amount of, an injury award are –

- whether the firefighter has a permanent disablement (for the duties of his/her role)
- whether any disablement has been occasioned by a qualifying injury
- the degree to which a person is disabled (i.e. the degree to which earnings capacity has been affected by the qualifying injury)
- any other issue wholly or partly of a medical nature.

The person who provides the medical opinion must be an independent qualified medical practitioner ("IQMP") selected by the authority.

If it is decided that the firefighter has suffered a qualifying injury, the IQMP will give an opinion on the firefighter's disablement for the duties of his/her role, and whether or not that disablement has been occasioned by the qualifying injury. Sometimes there may be a link between the disablement and the qualifying injury where the injury is not 100% the cause. For example, there may be other, non-qualifying injuries to take into account, or there may have been a pre-existing condition which was aggravated by something related to the duties of the role. In these circumstances the IQMP will suggest an "apportionment" figure to apply to the degree of disablement. The degree of disablement decides the amount of injury award due. If relevant, a separate certificate will show the assessment of degree of disablement based on the person's potential earnings after ceasing to be a firefighter.

The other issues "wholly or partly of a medical nature" could cover, for example, any question of default.

The opinion of the IQMP is binding on the authority. If the person refuses to submit to examination by an IQMP, the fire and rescue authority can decide the question of award without medical evidence or with such other medical evidence as they think fit.

## **DETERMINATION OF ENTITLEMENT TO AWARD: DEPENDANTS**

Where the question of injury arises on the death of a firefighter, the fire and rescue authority will have regard to the circumstances of death and the death certificate. In some circumstances (e.g. if the firefighter had retired) they may need to seek the opinion of an IQMP to confirm a link between the death and an injury in the exercise of duty.

### **NOTIFICATION OF DECISION**

If you are being considered for an injury award, when the fire and rescue authority have reached their decision they will tell you what they have decided and will explain that you can apply for a copy of the medical opinion within 14 days of being notified of the decision. They will also tell you about your rights of appeal if dissatisfied.

If an injury award is considered on the death of a firefighter, the authority will notify any eligible dependants of their decision, together with rights of appeal.

### **RIGHTS OF APPEAL**

If you (or your dependants) are dissatisfied with an award, or the failure to make an award, there are rights of appeal. Because medical issues are involved, however, you need to be certain whether the decision you wish to challenge is that of –

- the IQMP as contained in the medical opinion, in which case you would have a right of appeal to a Board of Medical Referees, or
- the fire and rescue authority where they have made a determination on something not covered by the medical opinion.

For example, if the authority determine that you are not entitled to an injury award because, although they hold the view that you have suffered a qualifying injury, the opinion of the IQMP is that there is no link between that injury and your disablement, you could appeal to the Board of Medical Referees against the medical opinion. To do this, you must give notice of appeal within 14 days of being supplied with a copy of the opinion.

If, however, the authority decide without reference to a medical opinion, that your injury was not received in the exercise of duty and so determine that you are not entitled to an injury award, you would have a right to ask the authority to reconsider your case. Failing a satisfactory resolution, you could then appeal to the Sheriff Court. You would have to check with the Court, as soon as possible, the time limit for giving notice of appeal – it is normally 21 days from the date of the decision with which you are dissatisfied.

For the "reconsideration" stage of a non-medical appeal you could use the two-stage Internal Dispute Resolution Procedures provided by the Pensions Act 1995. You may also be assisted by the Pensions Advisory Service ("TPAS"), the Pensions Ombudsman or the Scottish Public Pensions Ombudsman.

More information about rights of appeal, TPAS, the Pensions Ombudsman and the Scottish Public Pensions Ombudsman is given in the Guides to the FPS and NFPS, and your fire and rescue authority can give you further details.

## **PENSIONS INCREASE**

Pensions Increase is applied to injury awards to help them keep pace with inflation.

## **PAYMENT OF AWARDS**

An injury award is normally paid by the fire and rescue authority that employed the firefighter but if the injury can be linked to more than one employment and with different authorities, each authority may make payments. For example, if a retained firefighter employed by one authority is also employed as a regular firefighter by another authority and the injury can be linked to both employments, then subject to the rules that prevent duplication of benefits, both authorities may pay a share of the injury award. Or the authorities could agree that just one should have responsibility for payment. If a pension is below limits set by HM Revenue and Customs, the authority has discretion to commute it to a single lump sum payment.

## **PREVENTION OF DUPLICATION OF BENEFITS**

The rules that prevent duplication of benefits are quite complex. Basically if a person is entitled to two or more pensions or allowances in respect of the same period only one should be paid. If there is a difference in amount, the rules generally allow the greater amount to be paid even if this means that the payment may come from two sources where employment was with more than one fire and rescue authority. Your authority or authorities can give you further information according to your personal circumstances.

## **REDUCTION OF AWARD IN CASE OF DEFAULT**

If a firefighter contributed to the infirmity by his/her own default the fire and rescue can reduce the injury award payable by up to half. At age 60, if the reduced level is less than the level of a notional deferred pension to which the firefighter would have been entitled (under the FPS) at the date of ceasing to serve, the injury pension must be brought up to the level of that deferred pension. Deferred pensions are explained in the Guide to the FPS.

## **REVIEW OF INJURY AWARD**

A fire and rescue authority will periodically review injury awards paid to firefighters to consider whether the degree of disablement has substantially altered or the disablement occasioned by the qualifying injury has ceased. The reviews will take place at intervals decided by the authority; they have a discretion to decide that a particular case need not be reviewed if 5 years have passed since the injury award first became payable.

If the degree of disablement has altered to the extent that the award should be adjusted, they will reassess it; if the disablement has ceased, the pension will be stopped with immediate effect.

In the explanation of assessment of a firefighter's injury award on the following pages you will see that account has to be taken of certain State benefits. If these are amended, added to, or stopped, the fire and rescue authority must be told so that an adjustment to the injury pension can be made if necessary.

## **WITHDRAWAL OF INJURY PENSION DURING RE-EMPLOYMENT**

If a person is subsequently re-employed as a firefighter by any fire and rescue authority, the Compensation Scheme gives the fire and rescue authority by whom the award is payable the discretion to withdraw it for the duration of the period of re-employment.

## **FORFEITURE OF AWARD**

If a person is 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 whole or part of the injury award will be forfeited at the discretion of the fire and rescue authority.

## **WITHDRAWAL OF PENSION ON CONVICTION OF CERTAIN OFFENCES**

The fire and rescue authority has a discretion to withdraw an injury award in part or in whole, permanently or temporarily, if the pensioner is convicted of –

- an offence of treason, or
- an offence under the Official Secrets Acts 1911 to 1989 for which the pensioner has been sentenced to a term of imprisonment of at least 10 years, or
- an offence in connection with service as an employee of a fire and rescue authority which is certified by the Scottish Ministers to have been gravely injurious to the interests of the State or to be liable to lead to a serious loss of confidence in the public service.

## **SURVIVING SPOUSES AND CIVIL PARTNERS**

A surviving civil partner is entitled to an injury award on similar terms to those that apply in the case of a surviving spouse but the award will reflect service after 5 April 1988 only.

To be eligible for a full injury award, a surviving spouse or civil partner must not have been living separately from the firefighter at the date of death. In this context, living separately implies a recognition by at least one of the parties that the marriage or civil partnership is at an end even though divorce or dissolution proceedings may not have commenced. In these circumstances an award would be payable but assessed on "requisite benefit" principles as for the FPS – see the Guide to the FPS. However, if the firefighter was paying maintenance contributions and a greater pension would be payable if the parties were not living apart, the requisite benefit pension will be increased to the level of those contributions, provided they do not exceed the amount of the injury pension otherwise payable. Or, at the discretion of the fire and rescue authority the full injury award can be paid.

In the case of divorce or dissolution of civil partnership, the former spouse or civil partner would not be entitled to a dependant's injury award.

## **POST-RETIREMENT MARRIAGE OR CIVIL PARTNERSHIP**

In the case of death after retirement where the firefighter had married or entered into a civil partnership after retiring, an award would be paid but based on a notional ill-health pension and having regard to service after 5 April 1978 only in the case of a surviving spouse, or service after 5 April 1988 only in the case of a surviving civil partner.

## **EFFECT OF A NEW RELATIONSHIP**

If a surviving spouse or civil partner marries, remarries, forms a civil partnership or a subsequent civil partnership, entitlement to an injury award ends. It could, however, recommence at the discretion of the fire and rescue authority if the new relationship were to end.

## FIREFIGHTER'S INJURY AWARD

An injury award for a retained firefighter with protected rights provides –

- an ill-health award
- an injury gratuity which is a single lump sum payment, and
- an injury pension which is an annual amount, normally paid in monthly instalments.

All three parts of the award are calculated as if you had been a whole-time firefighter serving in a similar role, with a similar length of service, and a member of the FPS throughout that service. If, as a retained firefighter with protected rights, you chose to join the NFPS then any entitlement to an NFPS pension would be paid but deducted from the ill-health pension due under the above protected rights. This ensures no duplication of award.

### Ill-health award

There are two tiers of ill-health award – a lower tier and a higher tier. A lower tier would be awarded where a firefighter is permanently disabled for the performance of the duties of his/her role. A higher tier award would be made where, additionally, the firefighter is permanently disabled for any other regular employment. "Regular employment" in this context means employment for 30 hours a week on average over a 12-month period. If you are entitled to a higher tier award and have more than five years' service, the pension is based on enhanced service.

The guide to the FPS explains how lower tier and higher tier ill-health awards are calculated. (When looking at the examples in the Guide remember that, as a retained firefighter with protected rights, the ill-health award will be assessed as if you are a whole-time regular firefighter.) You can commute part of a lower tier pension to provide a lump sum if you wish, or "allocate" part of the award to provide a pension for a dependant.

### Injury gratuity

The injury gratuity is a lump sum based on a percentage of your "average pensionable pay". The percentage is decided according to your degree of disablement as follows –

DEGREE OF DISABLEMENT	GRATUITY
Slight disablement (25% or less)	12.5% of average pensionable pay
Minor disablement (more than 25% but not more than 50%)	25% of average pensionable pay
Major disablement (more than 50% but not more than 75%)	37.5% of average pensionable pay
Severe disablement (more than 75%)	50% of average pensionable pay

"Average pensionable pay" is that which would be used for the assessment of FPS benefits for a whole-time regular firefighter, normally an average of pensionable pay for the 365 days up to and including the last day of service (see "Explanation of expressions" on page 25).

#### **EXAMPLE: Retained firefighter with protected rights: injury gratuity**

A retained firefighter has a degree of disablement of 47%. Average pensionable pay of a whole-time regular firefighter in a similar role with similar service is £32,600. The injury gratuity would be:

$$25\% \times \text{£}32,600 = \text{£}8,150.00$$

## Injury pension

This is worked out in stages. As in the gratuity assessment, the first stage is a calculation based on a percentage of average pensionable pay according to the degree of disablement but account is also taken of "relevant service". Relevant service is that which would count as pensionable service if you had been a whole-time firefighter serving in the same role for the same period of time and as a member of the FPS. The relevant percentage is –

DEGREE OF DISABLEMENT	PENSION AS A PERCENTAGE OF AVERAGE PENSIONABLE PAY			
	Less than 5 years' service	5 or more but less than 15 years' service	15 or more but less than 25 years' service	25 or more years' service
Slight disablement (25% or less)	15%	30%	45%	60%
Minor disablement (more than 25% but not more than 50%)	40%	50%	60%	70%
Major disablement (more than 50% but not more than 75%)	65%	70%	75%	80%
Severe disablement (more than 75%)	85%	85%	85%	85%

Having assessed the injury pension as a percentage of the average pensionable pay of a whole-time regular firefighter in a similar role and with similar service, it must next be reduced by –

- 75% of the pension paid as part of the award, disregarding any reduction for commutation, allocation or any reduction in the protected ill-health pension by a pension due as a member of the NFPS (in compliance with the non-duplication rules);
- State benefits which relate to the injury. The deductible benefits change from time to time. Check the current position with your pensions administrator.

### EXAMPLE: Retained firefighter with protected rights: injury pension

A retained firefighter has 21 years' service and a degree of disablement assessed as 70%. He has not joined the NFPS. The percentage factor given in the table for his service and degree of disablement is 75% of average pensionable pay. Had he been a whole-time firefighter in a similar role his average pensionable pay would have been £30,000. He has entitlement to a protected rights ill-health pension of £14,500 a year. Deductible State benefits are £2,500 a year. The injury pension would be assessed as –

Injury pension before deductions:	75% x £30,000	=	£22,500.00 a year
less 3/4 of ill-health pension:	3/4 x £14,500	=	£ 10,875.00
less State benefits:		=	<u>£ 2,500.00</u>
Injury pension payable:		=	<u>£ 9,125.00 a year</u>

Suppose the same firefighter had been a member of the NFPS with 4 years' pensionable service and has entitlement to an ill-health pension of £2,000 in respect of that membership. The total ill-health pensions payable before commutation and allocation would still be £14,500, i.e. a NFPS pension of £2,000 and a protected rights ill-health pension of £12,500 (£14,500 - £2,000) in accordance with non-duplication rules. Consequently the total benefits payable would still be the same as above.

## **SURVIVING SPOUSE'S/CIVIL PARTNER'S INJURY AWARD**

The award paid to the surviving spouse or civil partner of a firefighter who dies as a result of a qualifying injury is called a "special award".

If the firefighter died as a result of a qualifying injury and –

"the injury was received in the execution of duties performed, in circumstances in which there was an intrinsic likelihood of his/her receiving a fatal injury, for the immediate purpose of saving the life of another person or of preventing loss of human life"

the award would be a higher "augmented award".

A fire and rescue authority can allow payment of the augmented award if they believe the terms of the above definition may have been met, or if they believe that the injury was received in circumstances where it would be inequitable not to pay it.

Both the special and augmented awards provide a pension which is an annual amount normally paid in monthly instalments.

There is also a lump sum gratuity payment although this must be reduced by any injury gratuity paid to the firefighter if he/she dies after having previously retired with an injury award. In these circumstances, if the firefighter's injury gratuity was a greater amount than that assessed for the surviving spouse or civil partner, no special or augmented award gratuity would be paid.

### **Surviving spouse's/civil partner's special award pension**

The starting point for assessing the pension element of the special award is to calculate 45% of the firefighter's average pensionable pay.

In the case of a retained firefighter with protected rights this will be the average pensionable pay of a whole-time regular firefighter who has served for the same length of service in a similar role and as a member of the FPS.

If the special award pension is payable to a surviving civil partner, the pension is 45% of average pensionable pay but pro rated to reflect service after 5 April 1988 as a proportion of total service. (If all service has been after 5 April 1988, the civil partner's pension would be the same as a spouse's pension.)

If the firefighter and surviving spouse or civil partner were living separately or the marriage or civil partnership took place after retirement, the injury benefits would be based on different principles – see page 10 of this Guide.

If the firefighter had been a member of the NFPS and a spouse's or civil partner's pension would be payable under that Scheme too, the non-duplication rules would require the greater of that pension or the protected special award pension to be paid, not both. In most cases the protected special award pension will be the greater.

In circumstances where the spouse's or civil partner's injury award is paid after the firefighter's retirement, for the first 13 weeks following death the total of spouse's, civil partner's and children's pensions under the Compensation Scheme, FPS and NFPS will be made up to the level of pension the former firefighter was receiving immediately before death (if this would give a greater amount).

**EXAMPLE: Retained firefighter with protected rights: special award pension**

A married retained firefighter dies in service as a result of a qualifying injury. The average pensionable pay of a whole-time regular firefighter in the same role and with the same service is £28,000 a year. The pension element of the surviving spouse's special award is assessed as –

$$45\% \times £28,000 = £12,600 \text{ a year}$$

If the firefighter had been in a civil partnership and had 22 years' service of which 18 had been after 5 April 1988 the surviving civil partner's award would be assessed as –

$$45\% \times £28,000 \times 18/22 = £10,309.09 \text{ a year}$$

If the firefighter had been a member of the NFPS, the protected pension figures shown above would be compared with the NFPS benefits due to the spouse or civil partner and the greater pension would be paid. But it is most unlikely that the NFPS pension would be the greater amount.

**Surviving spouse's/civil partner's special award gratuity**

In the case of death in service of a retained firefighter with protected rights, the special award gratuity payable to a surviving spouse is calculated as –

25% x (whole-time regular) firefighter's average pensionable pay,  
plus greater of:

1 x (whole-time regular) firefighter's average pensionable pay, or  
2.25 x firefighter's notional ill-health pension (higher tier award) as at date of death.

If death is after retirement, the special award gratuity is –

25% x (whole-time regular) firefighter's average pensionable pay  
less, if retired on injury grounds, a sum equal to the firefighter's injury gratuity.

For a civil partner, the assessment would be the same as for a surviving spouse except the notional pension for death in service is pro rated to reflect service after 5 April 1988 only.

**EXAMPLE: Retained firefighter with protected rights:  
special award gratuity: death in service**

A married retained firefighter dies in service as a result of a qualifying injury. Average pensionable pay, as for a whole-time regular firefighter, is £28,000. A higher tier ill-health pension of £14,466.67 would have been paid had the firefighter been a whole-time firefighter who retired on health grounds at the date of death. The gratuity part of the surviving spouse's special award is assessed as –

$$25\% \times £28,000.00 = £7,000.00$$

plus greater of

$$1 \times £28,000.00 = £28,000.00$$

or

$$2.25 \times £14,466.67 = \underline{£32,550.01}$$

$$\underline{£39,550.01}$$

If the firefighter had been in a civil partnership and had 22 years' service of which 18 had been after 5 April 1988 the surviving civil partner's award would be assessed as –

$$25\% \times £28,000.00 = £7,000.00$$

plus greater of

$$1 \times £28,000.00 = £28,000.00$$

or

$$2.25 \times £14,466.67 \times 18/22 = £26,631.82$$

$$\underline{\underline{£35,000.00}}$$

**EXAMPLE: Retained firefighter with protected rights:  
special award gratuity: death after retirement**

A married retained firefighter dies after retirement as a result of a qualifying injury. The firefighter had retired as a result of the injury and had received a protected rights injury gratuity of £3,500. This is deducted from the surviving spouse's gratuity. At the time the retained firefighter became entitled to the injury award, the average pensionable pay of a whole-time regular firefighter in a similar role and with similar service was £28,000. The gratuity part of the surviving spouse's special award is assessed as –

25% x £28,000	=	£7,000.00
less firefighter's injury gratuity	=	<u>£3,500.00</u>
		<u>£3,500.00</u>

If the firefighter had been in a civil partnership, the surviving civil partner's award would be assessed in the same way – there would be no adjustment for post 5 April 1988 service.

## Surviving spouse's/civil partner's augmented award pension

The protected rights augmented award pension is assessed on similar principles to the special award pension except that "50%" is substituted for "45%". Consequently, the starting point is to calculate 50% of the average pensionable pay of a whole-time regular firefighter who has served for the same length of service in a similar role and as a member of the FPS.

If the augmented award pension is payable to a surviving civil partner, the pension is pro rated to reflect service after 5 April 1988 as a proportion of total service. (If all service has been after 5 April 1988, the civil partner's pension is the same as a spouse's pension.)

If the firefighter and surviving spouse or civil partner were living separately or the marriage or civil partnership took place after retirement, the injury benefits would be based on different principles – see page 10 of this Guide.

In circumstances where the spouse's or civil partner's augmented award is paid after the firefighter's retirement, for the first 13 weeks following death the total of spouse's, civil partner's and children's pensions under the Compensation Scheme, FPS and NFPS will be made up to the level of any pension the former firefighter was receiving immediately before death if this would give a greater amount.

**EXAMPLE: Retained firefighter with protected rights: augmented award pension**

A married retained firefighter dies in service as a result of a qualifying injury in circumstances where an augmented award would be paid. Average pensionable pay of a whole-time regular firefighter in a similar role and with similar service is £28,000.

The pension element of the surviving spouse's augmented award is assessed as –

$$50\% \times £28,000 = £14,000 \text{ a year}$$

If the firefighter had been in a civil partnership and had 22 years' service of which 18 had been after 5 April 1988 the surviving civil partner's augmented award would be assessed as –

$$50\% \times £28,000 \times 18/22 = £11,454.55 \text{ a year}$$

If the firefighter had been a member of the NFPS, the protected pension figures shown above would be compared with the NFPS benefits due to the spouse or civil partner and the greater pension would be paid. But it is most unlikely that the NFPS pension would be the greater amount.

## Surviving spouse's/civil partner's augmented award gratuity

In the case of a retained firefighter with protected rights who dies in service or after retirement, the augmented award gratuity payable to a surviving spouse is calculated as the greater of –

- 2 x the annual pensionable pay for a person in the role of firefighter with 30 years' service employed by the London Fire and Emergency Planning Authority
- or
- the gratuity that would be payable as part of a special award.

For a civil partner, the assessment of 2 x the annual pensionable pay, would be the same as for a surviving spouse. The assessment of the special award gratuity for comparison purposes would be based on the same principles as shown on pages 14 (death in service) and 15 (death after retirement).

**EXAMPLE: Retained firefighter with protected rights:  
augmented award gratuity: death in service or after retirement**

A married retained firefighter dies in service as a result of a qualifying injury in circumstances where an augmented award can be paid. The annual pensionable pay of a London firefighter with 30 years' service is £30,000. If a special award had been made rather than an augmented award, the spouse's special award gratuity would be £39,550.01.

The gratuity part of the surviving spouse's augmented award is assessed as –

$$2 \times \text{£}30,000.00 = \text{£}60,000.00$$

or, if greater,

$$\text{the spouse's special award gratuity} = \text{£}39,550.01$$

$$\text{Therefore the gratuity payable} = \text{£}60,000.00$$

If the firefighter had been in a civil partnership and had 22 years' service of which 18 had been after 5 April 1988 the surviving civil partner's special award gratuity would be £35,000. The gratuity part of the surviving civil partner's augmented award is assessed as –

$$2 \times \text{£}30,000.00 = \text{£}60,000.00$$

or, if greater,

$$\text{the spouse's special award gratuity} = \text{£}35,000.00$$

$$\text{Therefore the gratuity payable} = \text{£}60,000.00$$

## CHILDREN'S INJURY AWARD

A child's injury award is a pension called a "special allowance". It would be paid to an eligible child if a retained firefighter dies from the effects of a qualifying injury or infirmity of mind or body occasioned by such an injury. A child's "special gratuity", which is a lump sum, is paid where the firefighter dies in circumstances in which a spouse or civil partner would qualify for an augmented award (see page 13) but no such award is payable (e.g. where the child has been left an orphan on the death of the firefighter).

If the retained firefighter had retired before the death occurred, for the first 13 weeks after his/her death the total of spouse's/civil partner's and children's pensions under the FPS/NFPS/Compensation Scheme is made up to the level of pension the firefighter or former firefighter was receiving under those Schemes if this would give a greater amount. If no spouse's or civil partner's pension is payable, just the child's pension and/or special allowance would be topped up.

To be eligible to receive an award the child must satisfy the conditions of dependency and age. To satisfy the condition of dependency, the child must be –

- a child of the firefighter's marriage or civil partnership (where the marriage or civil partnership took place on or before the last day of service), or
- an adopted child (where the adoption took place on or before the last day of service), or
- a step-child (where on or before the last day of service the firefighter and the child's parent were married or formed a civil partnership and the child was substantially dependent on the firefighter), or
- any other child of the firefighter provided the child was substantially dependent on the firefighter both at the last day of service and at the date of death (if different).

If the child was dependent on the firefighter because of permanent disablement at the date of the firefighter's death, a child's injury award would be paid regardless of age. It would cease to be payable only if the fire and rescue authority are satisfied that it should not have been awarded or if the child is no longer permanently disabled.

In cases where the child is not permanently disabled, eligibility according to age is as follows:

AGE OF CHILD*	ELIGIBILITY FOR CHILD'S SPECIAL ALLOWANCE AND CHILD'S SPECIAL GRATUITY
Under 18	Payable in all cases until and unless the child – <ul style="list-style-type: none"> <li>• has ceased full-time education and is in paid employment, or</li> <li>• has married or entered into a civil partnership.</li> </ul>
18 to under 23	Payable only where the child is in full-time education or attending a course of at least one year's duration.
23 or over	No award payable. Any special allowance in payment must cease.
<p><i>* In the case of a special allowance this means the age at or after the date of the firefighter's death; in the case of a special gratuity, it means the age at the date of the firefighter's death.</i></p>	

## Child's special allowance

The amount of the child's special allowance is a percentage of the firefighter's average pensionable pay. In the case of a retained firefighter with protected rights this will be the average pensionable pay of a whole-time regular firefighter who has served for the same length of service in a similar role and as a member of the FPS. The percentage depends upon whether or not the child has another living parent, and the number of children to whom the allowance would be payable –

Other parent alive: 10% x average pensionable pay per child to a limit of 40%

No other parent alive: 20% x average pensionable pay per child to a limit of 80%

If there are more than four children, the 40% or 80% would be divided equally between them. Then, as and when they cease to be eligible and the number falls below four, the allowance will be increased for each remaining eligible child to a maximum of 10% of average pensionable pay each (other parent alive) or 20% each (no other parent alive).

### **EXAMPLE: Retained firefighter with protected rights: child's special allowance**

A retained firefighter dies in service as a result of a qualifying injury leaving 5 eligible children. Their other parent is still alive. Average pensionable pay is £32,000.

Special allowance = 40% x £32,000.00 = £12,800 a year divided between the 5 children

Each child would receive: £12,800/5 = £2,560.00 a year

When the number reduces to 4 eligible children or less, each child would receive:

10% x £32,000 = £3,200.00 a year

If their other parent had pre-deceased the firefighter, children's allowances would be assessed as:

Special allowance = 80% x £32,000.00 = £25,600 a year divided between the 5 children.

Each child would receive: £25,600/5 = £5,120.00 a year

When the number reduces to 4 eligible children or less, each child would receive:

20% x £32,000.00 = £6,400.00 a year.

## Child's special gratuity

The child's special gratuity is due only where the firefighter has died in circumstances in which an augmented award would have been paid to a surviving spouse or civil partner – see page 13 – but there is no such eligible person to receive the award. It is calculated on similar principles, i.e. it would be twice the annual pensionable pay of a person employed in the role of firefighter by the London Fire and Emergency Planning Authority and who had completed 30 years' service. If two or more children are entitled to the award, the full amount of the special gratuity would be divided between them.

### **EXAMPLE: Retained firefighter with protected rights: child's special gratuity**

A retained firefighter dies in service as a result of a qualifying injury leaving 5 eligible children. The circumstances of death are such that a spouse's/civil partner's augmented award would normally have been payable but there is no spouse/civil partner. The annual pensionable pay of a person employed in the role of firefighter by the London Fire and Emergency Planning Authority is £32,000.

Child's special gratuity = 2 x £32,000.00 = £64,000 divided between the 5 children

Each child would receive: £64,000/5 = £12,800.00

## OTHER INJURY AWARDS

No other injury awards form part of the protected rights for a retained firefighter appointed before 6 April 2006 but the Compensation Scheme offers certain other awards on similar terms to those which would apply to a retained firefighter appointed on or after that date.

### Death in service: 13 week "top-up" of dependants' awards

As explained earlier in this Guide, if an injury award is paid to a spouse or civil partner and children in respect of a firefighter who had retired at the time of death, for the first 13 weeks following that death the total awards due under the Compensation Scheme (and any under the FPS/NFPS) are made up to the level of pension the former firefighter was receiving. With effect from 6 April 2006 the Compensation Scheme offers a similar short-term top-up in the case of death in service. For the first 13 weeks following the death of the firefighter, the dependants' awards would be topped up to the firefighter's weekly rate of pensionable pay if this would give a greater amount.

### Adult dependent relative's special pension

Apart from the injury awards provided for a surviving spouse, civil partner and children, the Compensation Scheme makes provision for other relatives who may have been substantially dependent upon the firefighter's financial support at the time of his/her death (from the effects of a qualifying injury or infirmity of mind or body occasioned by a qualifying injury). Unlike the spouse's/civil partner's/children's award which must be made if the conditions are satisfied, the payment of an award to a dependent relative – and the period for which the award will be paid – is at the discretion of the fire and rescue authority. The award is called an "adult dependent relative's special pension". Before 6 April 2006, it was paid in the case of regular firefighters only. Since that date it has become available for retained firefighters, too.

An adult dependent relative could be the firefighter's parent, brother or sister aged 19 or over, or child aged 19 or over. (A child is not permitted to receive this award and a child's special allowance in respect of the same period of service.) The pension is –

where a spouse or civil partner is alive:  $20\% \times$  final pensionable pay  
 in any other case:  $45\% \times$  final pensionable pay

The special pension must not be greater than any difference between final pensionable pay and the total of other injury pensions paid to a surviving spouse or civil partner and child. "Final pensionable pay" is the NFPS equivalent of average pensionable pay in the FPS. For a retained firefighter it is determined by reference to that of a whole-time regular firefighter in a similar role and with similar service but it would be pro rated to reflect the part-time service as a proportion of whole-time. If the retained firefighter had not joined the NFPS, the pay used is that which would have counted as pensionable, on similar terms, if a member.

Because the pay is pro rated for this purpose, but the protected rights injury pensions which are payable to the spouse, civil partner and child are based on whole-time pay, in many cases it may be that there is no, or very limited, balance of final pensionable pay which can provide a dependant relative's special pension. For a retained firefighter with protected rights, therefore, it may be that a fire and rescue authority could only consider this award if no other injury awards are payable.

**EXAMPLE: Retained firefighter with protected rights:  
adult dependent relative's special pension**

A retained firefighter dies in service as a result of a qualifying injury leaving a widow and two children. Since the death of his parents he had been looking after and financially supporting his disabled younger brother aged 30. The average/final pensionable pay of a whole-time firefighter in a similar role would be £30,000. As he has protected rights the widow's and children's awards are based on this figure. His pensionable service would count as 1/4 of whole-time and so final pensionable pay used for the adult dependent relative's pension would be £30,000/4 = £7,500.

The total of other injury pensions payable is –

widow's special award pension	= 45% x £30,000.00	=	£13,500.00 a year
children's special allowance: 2 x 10%	= 20% x £30,000.00	=	<u>£ 6,000.00</u> a year
	Total	=	£19,500.00 a year

Because a spouse's pension is payable, an adult dependent relative's pension before deduction for other awards must be no greater than –

$$20\% \times £7,500 = £1,500$$

After the deduction of other awards there would be no balance left to pay to a dependent relative.

If there was no surviving spouse, an adult dependent relative's award must be no greater than –

$$45\% \times £7,500 = £3,375$$

In the absence of a spouse, the children's awards would be higher than those shown above (based on 20% each). In this case it would only be if no children's awards were payable that the fire and rescue authority could consider paying a pension up to £3,375 a year to the firefighter's brother.

## Dependent relative's gratuity

This, too, is an award which can apply to retained firefighters who die after 5 April 2006. It is not restricted to cases where the firefighter dies from the effect of a qualifying injury, etc. It can be paid where the firefighter dies in service or while receiving any form of pension, other than a deferred pension. The "dependent relative" for this award would be a surviving spouse or civil partner, parent, grandparent, child (of any age), or a child of any of these relatives (no age limit) who was substantially dependent on the firefighter immediately before the death. The fire and rescue authority have the discretion, if they think fit, to pay a gratuity (lump sum) to any dependent relative provided that the total of all gratuities awarded in this way do not exceed the amount of the firefighter's total pension contributions. This could only apply, therefore, if the firefighter had paid contributions which had not been refunded. For this reason, those retained firefighters who have not joined the NFPS, or who have opted out, would not normally be covered by the provision.

## Awards for, or in relation to, reservists

This provision relates to a firefighter who is "called up" for Reserve Forces Service and who is a member of the NFPS. If a firefighter is killed or injured during Reserve Forces Service there is no automatic entitlement to Compensation Scheme awards as would be the case where the death or disability is derived from a qualifying injury as a firefighter. However, the fire and rescue authority have discretionary powers to increase the awards due under the NFPS by additional amounts which reflect the injury. Whether or not the fire and rescue authority would exercise these powers would depend upon the circumstances of an individual case and whether or not there would be entitlement to a War Disablement Pension or a pension for a dependant under the War Pensions Scheme. (These arrangements are administered by the Ministry of Defence.)

**PART 2**

**COMPENSATION FOR DEATH  
OR PERMANENT INCAPACITY  
WHILE ON DUTY**

**"DUTY-RELATED COMPENSATION"**

## **WHO IS COVERED BY THE DUTY-RELATED COMPENSATION PROVISIONS?**

The duty-related compensation provisions apply to –

- a whole-time or part-time regular firefighter
- a firefighter undertaking retained duties
- a volunteer firefighter
- the dependants of any of the above.

"Dependants" means –

- a spouse or civil partner living with the firefighter at the date of death
- a spouse or civil partner not living with the firefighter at the date of death but wholly or substantially dependent on him/her for financial support
- a long-term partner<sup>1</sup> of the firefighter
- any dependent child who, at the date of the firefighter's death was –
  - under age 16, or
  - age 16 or over, but not age 19, and undergoing full-time education or full-time vocational training
- any parent of the firefighter who, at the date of death, was wholly or substantially dependent on him/her for financial support
- any brother, sister, daughter or son of the firefighter who at the date of death had attained age 19 and was wholly or substantially dependent upon him/her for financial support.

### **ELIGIBILITY**

To qualify for duty-related compensation a firefighter must –

- at the date of retiring from the fire and rescue service, be permanently incapacitated for carrying on any occupation solely by reason of a qualifying injury sustained in the performance of his/her duties as a firefighter.

For a dependant to qualify for duty-related compensation the firefighter must –

- have died within 12 months of sustaining a qualifying injury sustained in the performance of his/her duties as a firefighter, the death having been caused solely by the effects of the qualifying injury.

Whenever a qualifying injury is mentioned in the context of duty-related compensation it means an injury received by a person in the exercise of his/her duties as a regular, retained or volunteer firefighter.

"Permanent incapacity" means that the incapacity will continue at least to normal pension age (i.e. to age 55).

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<sup>1</sup> This is a person who is neither a spouse nor a civil partner of the firefighter and who was in a relationship with him/her that continued, to the exclusion of any other relationship, for the period of at least 2 years ending with the firefighter's death. The 2 years could be a shorter period at the discretion of the fire and rescue authority.

## AMOUNT OF DUTY-RELATED COMPENSATION PAYABLE

Duty-related compensation for a retained firefighter with protected rights is an amount equal to 5 times the annual rate of pay – at the date of the injury – of a person employed by the fire and rescue authority in the role of firefighter and who, for pay purposes, has completed 4 years' service and is considered "competent".

If the firefighter's "serious and culpable negligence or misconduct" contributed in any way to the circumstances in which the injury was sustained, the fire and rescue authority can reduce the sum as they consider appropriate.

Also, the fire and rescue authority must deduct from the sum –

- the amount of any compensation or damages paid to the firefighter or dependants relating to the qualifying injury, and
- the amount of any gratuity or lump sum payable under the Compensation Scheme, the FPS or the NFPS, other than any difference between the special and augmented gratuity paid to a surviving spouse or civil partner.

For this reason, the recipient(s) of the duty-related compensation must keep the fire and rescue authority informed of all such payments (including those made by the authority). If any payment is not declared until after the duty-related compensation has been paid, it will be recovered by the authority.

Because of these required deductions, duty-related compensation would not be paid to dependants if the firefighter him or herself had already received such a payment.

If there is more than one dependant it is paid for their joint benefit, i.e. divided between them. If the firefighter dies in circumstances where duty-related compensation would have been paid but leaves no dependants, the compensation will instead be the sum of £950 paid to the executor or personal representatives for the benefit of his/her estate.

## DETERMINATION OF ENTITLEMENT TO AWARD: THE FIREFIGHTER

It is the fire and rescue authority that make a decision as to entitlement to award but they must obtain a medical opinion to help them decide the medical issues. This is most likely to be done at the same time as establishing the firefighter's entitlement to any award under the FPS or NFPS and/or to an injury award under the Compensation Scheme.

The fire and rescue authority will first have to decide if an injury sustained by a firefighter falls within the definition of a "qualifying injury" for duty-related compensation purposes. (The definition is slightly different to the definition for injury award purposes.) It may be that they will need a medical opinion to assist with this. They must also establish, with help from a medical opinion, whether the firefighter is permanently incapacitated for carrying on any occupation and, if so, whether that incapacity is solely by reason of a qualifying injury sustained in the performance of his/her duties as a firefighter.

As with the injury award, the person giving the medical opinion must be an independent qualified medical practitioner ("IQMP"). The opinion of the IQMP is binding on the authority. If the person refuses to submit to examination by the IQMP chosen by the fire and rescue authority, the authority can decide the question of award without medical evidence or with such other medical evidence as they think fit.

## DETERMINATION OF ENTITLEMENT TO AWARD: DEPENDANTS

Where the question of on-duty compensation arises on the death of the firefighter, the fire and rescue authority will have regard to the circumstances of death and the death certificate. In some circumstances (e.g. if there is the possibility that the qualifying injury was not the sole cause of death) they may need to seek the opinion of an IQMP.

## NOTIFICATION OF DECISION AND RIGHTS OF APPEAL

The process of notification of decision and the rights of appeal are similar to those which apply in the case of an injury award – see page 8.

## FORFEITURE OF AWARD

If a person is 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 whole or part of the injury award will be forfeited at the discretion of the fire and rescue authority.

## EXAMPLE OF ASSESSMENT OF DUTY-RELATED COMPENSATION

### **EXAMPLE: Retained firefighter with protected rights: duty-related compensation**

A retained firefighter dies in the performance of his duties as a firefighter. He leaves a widow and an elderly mother who was substantially dependent upon him for financial support. At his date of death, a person employed by the fire and rescue authority in the role of firefighter would be paid £28,000 a year. Damages and compensation of £20,000 are paid. His widow receives an augmented gratuity of £60,000 under the protected rights provisions. Had she received a special award gratuity under the same provisions it would have been £35,000.

Duty-related compensation would be assessed as:

5 x £28,000	=	£140,000.00
less damages/compensation	=	£ 20,000.00
less special award gratuity	=	<u>£ 35,000.00</u>
Therefore the duty-related compensation would be		<u>£ 85,000.00</u>

The sum is payable to his widow and his mother for their joint benefit.

## EXPLANATION OF EXPRESSIONS

Expression	Explanation
allocation	An option to give up part of a FPS or NFPS pension at retirement in order to provide a benefit (or additional benefit) for a spouse, civil partner, or dependant.
average pensionable pay	The pay normally used for the assessment of benefits under the FPS. In most cases it is pensionable pay averaged over the last 365 days of pensionable service. If either of the two preceding periods of 365 days would produce a greater amount, the average pensionable pay from one of those earlier periods could be substituted. For a retained firefighter with protected rights, in most of the assessments reference is made to the average pensionable pay of a whole-time regular firefighter in a similar role and with similar service.
Board of Medical Referees	A Board arranged by the Scottish Ministers to hear medical appeals. It has at least 3 members; the Chair who will be a consultant in occupational medicine, a second consultant or senior specialist in occupational medicine, and a consultant in the clinical speciality relevant to the medical condition upon which the appeal is based. There could be more than one specialist consultant if more than one medical condition is the basis of appeal.
civil partner	The person with whom a firefighter has formed a civil partnership.
commutation	An option to give up part of a FPS or NFPS pension at retirement to provide a lump sum.
Compensation Scheme	The Firefighters' Compensation Scheme (Scotland) 2006.
competent	When deciding the pay on which duty-related compensation would be based, a person employed in the role of firefighter is "competent" for pay purposes if found to be competent in the performance of the duties of the role and paid at the rate appropriate to competent firefighters performing the same role.
degree of disablement	The degree to which earnings capacity has been affected by a qualifying injury.
final pensionable pay	This is the NFPS equivalent of "average pensionable pay". It would be used for the assessment of those benefits which are not provided for retained firefighters under protected rights.
FPS	The Firefighters' Pension Scheme 1992.
IQMP	<p>The independent qualified medical practitioner selected by the fire and rescue authority to provide a medical opinion before determining an award due to a firefighter. The medical practitioner must have at least a minimum level of qualification in occupational medicine and must certify that he/she</p> <ul style="list-style-type: none"> <li>- 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</li> <li>- is not acting, nor has acted at any time, as the representative of the employee, the authority or any other party in relation to the same case.</li> </ul>

## EXPLANATION OF EXPRESSIONS (CONTINUED)

Expression	Explanation
NFPS	The New Firefighters' Pension Scheme (Scotland) 2006.
optant-out	A firefighter who could be a member of the FPS or NFPS but who has elected not to be.
pensionable pay	The pay on which pension contributions are paid by a member of the FPS or NFPS. This is the amount determined in relation to the duties of the role.
pension sharing	The "splitting" of a pension as ordered by a court on divorce or dissolution of a civil partnership.
qualifying injury (injury award)	An injury received by a person without his/her own default in the exercise of his/her duties as a regular, retained or volunteer firefighter.
qualifying injury (duty-related compensation)	An injury received by a person in the exercise of his/her duties as a regular, retained or volunteer firefighter.
regular firefighter	A person employed by a fire and rescue authority, and not in a temporary capacity, as a part-time or whole-time firefighter, other than as a retained or volunteer firefighter. This must be on terms under which he/she is, or may be, required to engage in firefighting or, without any break in continuity of employment, may be required to perform other duties appropriate to his/her role as a firefighter instead of, or in addition to, firefighting.
retained or volunteer firefighter	<p>A person employed by a fire and rescue authority, and not in a temporary capacity –</p> <ul style="list-style-type: none"> <li>- as a firefighter but not a regular firefighter,</li> <li>- on terms under which he/she is, or may be, required to engage in firefighting or, without any break in continuity of employment, may be required to perform other duties appropriate to his/her role as a firefighter instead of, or in addition to, firefighting, and</li> <li>- who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that he/she receives.</li> </ul> <p>In this Guide "retained firefighter" means a retained duty system firefighter, a day-crewing firefighter who undertakes retained duties, or a volunteer firefighter.</p>
spouse	The person to whom a firefighter is legally married.

## WHO CAN I CONTACT FOR MORE INFORMATION?

If you –

- need more information about any of the provisions of the Compensation Scheme, or
- wish to see the Statutory Instrument which contains the rules of the Scheme,

you should contact:

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Also, if you have access to the Internet, the website of the Scottish Public Pensions Agency has special pages dedicated to the Firefighters' Pension Scheme, the New Firefighters' Pension Scheme and the Compensation Scheme.

The website can be found at [www.sppa.gov.uk](http://www.sppa.gov.uk)