

## PART K

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### REVISION AND WITHDRAWAL OF AWARDS

Part K deals with the circumstances in which ill-health ( and injury ) pensions may be withdrawn on recovery ( K1 ), provides for the re-assessment of injury pensions ( K2 ) and allows ill-health or injury awards to be reduced where permanent disablement is due to the person's own default ( K3 ). It also deals with abatement of pension on re-employment as a regular firefighter ( K4 ) and the possible forfeiture of an award on conviction of an offence ( K5 ).

When may your  
ill-health  
and injury pensions  
be cancelled?

If you are receiving an ill-health pension under B3, and you have not yet reached the time when (if you had continued to serve) you would have:

- attained age 50 and completed 25 years' service, or
- reached the age of compulsory retirement for your rank,

if you recover your health, your fire authority may:

- \* cancel your ill-health pension (except any secured portion payable at state pensionable age (see ANNEX 2-11, 12, 13)), and
- \* cancel any injury pension to which you may be entitled under B4,

but only if they:

- \* offer you the chance to rejoin the brigade in your old rank.

POINTS TO NOTE
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1. Your fire authority will only consider this course if they are prepared to reinstate you, and if they think it possible that you may have recovered your health sufficiently to resume firefighting duties.
2. They may consider this course at such intervals as they think fit.
3. All the arrangements under Part H, for your medical examination and rights of appeal, will apply.
4. If you resume service in your former brigade (in your old rank) within one month of the cancellation of your entitlement, payment will be restored for that period.
5. The broad purposes of your ill-health pension are:
  - to compensate you for the interruption of your career, and (once you reach the age when you could have retired with a pension)
  - to take the place of a retirement pension.

That is why:

- a. once you have reached the age at which you could have retired with a pension:
  - your ill-health pension may no longer be cancelled.
- b. if you have not reached that age, and your ill-health pension is cancelled:
  - if you resume duty, you will be able to count the service you counted when you retired with your ill-health pension towards any subsequent benefit entitlement, subject to:
    - i. a reduced commutation right, if you had already commuted part of your ill-health pension (see B7(10)), and
    - ii. the possibility of a reduction of pension at state pensionable age to balance any secured portion of your ill-health pension which comes into payment then (Schedule 2, Part VII para 4).

CANCELLATION OF ILL-HEALTH  
AND INJURY PENSION

- if you do not resume duty, account will be taken of the benefit which you would have received had you left voluntarily at the time of your ill-health retirement, and you may become entitled to:
  - i. a deferred pension under B5(3), or if not entitled to a deferred pension,
  - ii. the balance of your aggregate pension contributions, under K1(5) if:
    - the payments already made in respect of your ill-health pension, and
    - the actuarial value of your secured portion at state pensionable age, assessed by Government Actuary (see ANNEX 4-3)are less than those contributions.



When may your  
injury pension  
be reassessed?

If you are entitled to an injury pension under B4:

- even if you are receiving no payments because of the amount of your DSS benefits, your fire authority may consider at suitable intervals:

\* whether your degree of disablement has altered.

If your degree of disablement is found to have altered substantially, bringing you into a new category, your pension will be revised accordingly. (The categories "slight", "minor", "major", and "severe" are explained at A10-2 and B4-2.)

If your disability is found to have ceased, and you are not receiving an ordinary, short service or ill-health pension,

\* your injury pension will be cancelled.

POINTS TO NOTE

1. Your fire authority may undertake this reassessment from time to time, until your pension has been payable for 5 years, when they may decide to stop making this check.
2. It is up to them how often they think it suitable to do so in the meantime.
3. All the arrangements under Part H, for your medical examination and rights of appeal, will apply.
4. The revision of your injury pension under K2(1) cannot result in its cancellation, unless K2(2) applies, because even though your degree of disablement may be "nil" it would fall into the category "slight" (25% disablement or less).
5. Your injury pension cannot be cancelled under K2(2) if you are also receiving an ill-health pension, which is not cancelled under K1 (which is either because you are not liable to recall or because your fire authority decide not to take steps to recall you).
6. Your injury pension cannot be cancelled under K2(2) if you are also receiving an ordinary or short service pension. (This is because, if you had already retired with an ill-health pension in similar circumstances that ill-health pension could not have been cancelled.)

What default could lead to the reduction of your pension?

This rule is rarely used.

It means that, if you had contributed substantially to your disablement by your own default:

- \* your fire authority could reduce the amount of any ill-health pension or gratuity, or injury pension or gratuity, by up to one half.

except that:

- once you reach age 60, your ill-health pension cannot be reduced to less than the deferred pension (under B5) you would have received at that age had you not been entitled to an ill-health pension on your retirement,
- if you have a guaranteed minimum at state pensionable age, J1 will ensure that a pension equal to your GMP will be payable to you from that age.

POINTS TO NOTE

1. There is a distinction between:
  - \* default which may have caused or contributed to your receiving an injury, which could prevent your becoming entitled to an injury award under B4 (see "Default", A9-1), which is usually a matter for your fire authority to determine, and,
  - \* default in taking care of your health, which has brought about or substantially contributed to your disablement (perhaps following an injury on duty), which is a matter to be determined on the advice of a doctor (see H1-1).
2. All the arrangements under Part H, for your medical examination and rights of appeal will apply, if your fire authority are considering whether or not to reduce your award under this rule.
3. This rule can apply at any time after your retirement if information about the cause of your disablement comes to light.
4. The proviso relating to a deferred pension will apply only if you would have been entitled to a deferred pension on your retirement but for your ill-health entitlement.

When may a pension  
be withdrawn

If you are serving as a regular firefighter, and you are entitled to a pension under FPS the fire authority paying your pension may:

- \* withdraw it in whole or in part while you are so serving.

POINTS TO NOTE

1. It is unusual for a firefighter who is entitled to a pension in payment to serve again as a regular firefighter.
2. A commuted lump sum payable on retirement is not affected by the subsequent withdrawal of a pension.
3. The Home Departments recommend that, in accordance with general public service pensions policy, fire authorities should, on a pensioner's resuming service as a regular firefighter
  - withdraw so much of a fire pension that the total of pension and pay on rejoining does not exceed the rate of pay before retirement.
  - \* In most cases, where current pay at least equals previous pay, the firefighter's pension is likely to be wholly withdrawn during the second period of service.
4. The pension benefits available to you, if you have two periods of service and you retire a second time, will be as follows:
  - \* your original pension will come back into payment with the addition of pensions increase (if appropriate) from the date it stopped (see also ANNEX 1-3), and
  - \* your benefit in respect of your second retirement will be a separate benefit depending solely on the length and circumstances of your second period of service, ie it could be:
    - a short service award, under B2
    - an ill-health award, under B3
    - a deferred pension, under B5, or
    - a refund of contributions in respect of your second period of service, under B6.

The provisions for commutation and allocation under B7, B8 and B9 would apply, if appropriate.

In addition, if you should be permanently disabled as a result of an injury on duty, an injury award under B4 could be payable.

WITHDRAWAL OF PENSION DURING  
SERVICE AS A REGULAR FIREFIGHTER

5. The same principle would apply to the benefits available for your dependants.
- \* For the first 13 weeks after your death:
    - if you should die in service, your widow(er)'s or children's awards would be increased to equal your weekly pensionable pay just before you died (and any part of your pension which was also in payment at the time of your death), or
    - if you should die after your second retirement, your widow(er)'s or children's awards would be increased to equal the weekly amount of your pension or pensions in payment at the time of your death (with pensions increase if any - see E8-1).
  - \* After the first 13 weeks, your widow(er)'s and dependants' benefits would each be calculated according to their entitlement arising in respect of each of your periods of service.
6. It is possible, though highly unlikely, that a firefighter could be serving beyond state pensionable age and that payment of the GMP would be postponed under J1(3)(a).
- \* A fire authority will bear in mind the increase in a GMP which would result, in deciding how much pension to withdraw.
  - \* Once a GMP comes into payment it will continue in payment if greater than any other pension provided under the scheme.

WITHDRAWAL OF PENSION ON  
CONVICTION OF CERTAIN OFFENCES

When can a pension be withdrawn (forfeited)?

Your fire pension can be forfeited only in the most exceptional circumstances and there have been no such cases between 1978, when the forfeiture requirements were tightened, and the issue of this commentary.

Social security legislation restricts the power to forfeit:

- \* "short service benefit" provided by an occupational pension scheme (deferred pension in the FPS).
- \* GMPs, or
- \* the secured portion of a pension.

The provisions of the FPS ensure that no other fire pensions may be forfeited more easily than deferred pensions.

Your fire authority may decide that your pension should be forfeited if:

- \* you are convicted of:
  - a. treason, or
  - b. an offence or offences under the Official Secrets Acts, for which you are sentenced at one time to imprisonment amounting to at least 10 years, or
- \* you are convicted of an offence in connection with your service as a firefighter, which is certified by the Secretary of State either:
  - a. to have been gravely injurious to the interests of the State, or
  - b. to be liable to lead to serious loss of confidence in the public service (effectively the fire service in this context).

Your fire authority may decide that a pension payable to your widow(er) should be forfeited if:

- \* that person is convicted of:
  - a. treason, or
  - b. an offence or offences under the Official Secrets Acts, for which there is a sentence (at the one time) to imprisonment amounting to at least 10 years.

In such a case, the offence(s) must have been committed after your death.

WITHDRAWAL OF PENSION ON  
CONVICTION OF CERTAIN OFFENCES

Your fire authority, in making any forfeiture decision, may decide that a pension should be forfeited:

- \* in whole or in part, and
- \* permanently or temporarily, as they think fit.

Your GMP, (payable only after you reach state pensionable age) may be forfeited only if you are convicted of the offences previously mentioned involving treason, or the Official Secrets Acts.

If you have a secured portion of your pension, that portion may be forfeited before you reach state pensionable age, but after that it may be forfeited only while you are in legal custody (in prison or otherwise).

Right of Appeal

If your fire pension is forfeited, or one of your dependant's pensions is forfeited, there is a right of appeal:

- \* to the Crown Court, under H3(2), if you were a member of a brigade in England or Wales,
- \* to the Sheriff Court, under H3(6), if you were a member of a Scottish brigade, or
- \* to a tribunal appointed by the Secretary of State under (H3(4)), if you were serving overseas as mentioned in A4(2)(d).

You do not have a right of appeal against the issue of a certificate under K5(2)(b).

POINTS TO NOTE

1. "Pensions", for the purposes of K5, does not include an allowance, a gratuity, a lump sum, or an award by way of repayment of aggregate pension contributions. It refers to an ordinary, short service, ill-health, injury or deferred pension, or a widow(er)'s pension.
2. A commuted lump sum, may not be forfeited, but if a pension is forfeited before it becomes payable (eg a deferred pension before you are 60), there will be no pension left to commute for a lump sum.
3. It is for a fire authority in the first place to form a view on the case for forfeiture of pension in a particular case. If forfeiture is considered appropriate, it is for the fire authority to put the facts before the Secretary of State, who will then decide whether to issue a certificate under K5(2)(b).
4. There is no general guidance about what constitutes an offence "considered liable to lead to serious loss of confidence in the public service". It should be noted that actual loss of confidence in the public service is not essential, if the Secretary of State considers that an offence was liable to lead to such loss of confidence.
5. Where a fire authority are considering applying for the issue of a certificate it is important to remember that the offence has to have been committed in "connection with the individual's service". By inference this would involve abuse of the role as a firefighter. A hypothetical example where forfeiture might be considered appropriate would be a firefighter who had committed a serious arson offence while on duty.