

Subject: Research – A Layman’s briefing note on two Pension Schemes.

Descriptors: FSR-Fire Service Regulations; FSR-SI(Statutory Instrument).

PSR-Police Service Regulations;PSR-SI.

To: Mr. J.M. Coplestone-Bruce.

From: Paul P Burns GFireE.

Dear J.M. Coplestone-Bruce,

At short notice, you have asked me to provide a layman’s researched briefing note on a crude comparison between the above sets of Regulations.

I have drawn on pension industry technical advisers; practising and lecturing actuaries; and Dr Ros Altmann the newly appointed Pensions Minister who as you know I have been in private dialogue with for the past several years, for up-to-date information.

I am sorry it is rather rushed, so it is not a dissertation!

1. The FSR and the PSR are ‘similar’(Having a resemblance) but not the ‘same’(Identical).(OED);

2. The PSR are written in a narrative form without demonstrable formulae whilst the FSR are written with both narrative and actuarial formulae being used extensively to assist pension providers in simple practice;

3. The FSR are clearly more modern. Highlighted in pension calculation where broadly the FSR uses years, 60ths, and applied formulae in the calculation of pensions as opposed to just 60ths in the PSR.

The PSR B3 uses a ‘reference’ base APP whilst the FSR uses both the ‘actual’ APP and a ‘reference’ APP for calculation purposes and is therefore much more wide ranging and generous in its compensation potential than its counterpart.

4. The PSR in calculating APP is much simpler and clearly based on an April financial year where the FSR is usually based on two part year pay scales traditionally commencing in November of each year the result of the first 1977/8 National Strike. This can be tedious to calculate and errors will arise.

5. An acquired understanding of the PSR(with the exclusion of B4 Injury Awards which are identical) leads to a mind-set which will not transpose to the FSR. To attempt to do so will only lead to confusion and a lack of understanding of the FSR minutiae. So a fresh untrammelled mind-set is required.

The FSR regulates a group of public servants who have a defined purpose which is different in service delivery and risk.

6. HO Commentaries on both Pension Schemes are *insightful* as to *intent* but they still cannot replace the law . They correctly state so in the Foreword:

“the purpose is to help those who use the Scheme to understand its provisions, bearing in mind that such guidance cannot replace or override those provisions”.

7. The Commentary K1-1 Para 5 provides an insight into the broad purpose of an ill-health pension.

“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.”. (my underline).

8. Next to a broad understanding of accrual rates.

Accrual rates can run from 1/30th to 1/120th and no one I have spoken to can be sure where the idea came from though there are suggestions that historically it *might* be the Inland Revenue

The idea of a 60th was that it provided 2/3rds after 40 years with 2/3rds thought to be the old Inland Revenue rules with such a maximum. 80ths often comes with a lump sum of 3/80ths, and enhancement if you will.

In the past the conversion factor to change pension into cash (commutation function) was £1 of pension is worth £9 of cash). In calculation if 3/80ths of cash is taken and converted to a pension, the pension amount is $3/80 \times 1/9$.

If this is added to a 1/80th pension then the total pension of $1/80 + 3/80 \times 1/9$ which with a bit of arithmetic is, $9/720 + 3/720 = 12/720 = 1/60$ th.

In other words 1/60th was seen as “the same” as 1/80th pension and 3/80ths cash. Nowadays the conversion factor is much bigger than 9 so 1/60ths is seen as better.

9. These analyses are reflected in a modern setting by Mr. D. Hamilton, Technical Director at the Pensions Advisory Service who states...

“It is your pension scheme rules rather than legislation which dictate how your pension is calculated.

The situation you describe is quite common, with entitlement to a 40/60ths pension only arising at age 65, regardless of how many years the individual has spent in the scheme.

Your pension will only grow beyond 40/60ths if the scheme rules say so. Certainly legislation will not prohibit this, but it does not require it to happen.”.

11. Following from this what is the legislative position with 1/60ths currently in both the PSR and the FSR , with emphasis on the FSR?

- Both sets of Regulations are subordinate to the Pensions Acts.

Repeated searches of the Pensions Act 1995; the Pensions Act 2004; and the Public Service Pensions Act 2013, fail to elicit any reference to the 60ths of any description.

- The 1973 FSR-SI categorically states that an ill health pension is limited, or if you like, 'capped' at 40/60ths.
- The 1987 PSR-SI categorically states that an ill health pension is 'capped' at 40/60ths.
- The 1992 FSR-SI does not categorically state a 'cap' or limitation of 40/60ths to any pension or formulae throughout its main text.

However, in the entire FSR-SI there is only one direct reference to a 40/60ths 'cap' of a Short Service or ill-Health pension which is contained in(Sorry the lead in is tortuous), Schedule 11(Page Substitution); Special Cases; Part IV; Rule J6; Modification For Persons Serving On 10th July 1956; Page 82;Para 17 'For Parts I to III of Schedule 2 substitute...Part I and Part II.

I am not a Special Case and I was not serving on 10th July 1956 and thus these substitute Pages and their content do not apply to my circumstances and I doubt to many others by now.

Nevertheless this is the only non-relevant quote in the **entire SI**. A statutory 'cap' is not stated in Rules B1-B5. Nor, most specifically, in the ill-health or notional retirement pension formulae.

- The 1992 FSR-Commentary does indeed refer to 40/60ths but this is clearly coupled(twice) to the statement of ..."what you could have earned(if you had not been injured)" within the context of a compulsory age/time served discharge, Rule B1 pension.
- The 2006 FSR-SI Explanatory Note, Page 71, Paragraph (g) states:...

"pension will accrue at 1/60th per year. A firefighter member will be able to accrue more than 40 years' pensionable service;"

Logically to allow this accrual must then inevitably allow the payment of a pension above any 40/60ths 'cap' which in any event is not stated in this SI either?

12. Rounding up broadly on the 60ths issue.

The Fire Service, over time, has clearly moved from the 1973, 40/60ths 'cap' to a position in the 1992 Scheme where there is no Statute limitation or 'cap' on a pension except by formula; to a position in 2006 Scheme where accrual over 40 years of service is encouraged with the result that future pensions above 40/60ths will be paid without demur.

13. Next a closer look at the operation of the 1992 Scheme in respect of supposed existence of a 40/60ths 'cap'.

- The B1 'Ordinary' formula *always* calculates out to 40/60ths but there is no statutory 40/60ths stated 'cap' for this position in the SI.
- The FSR Rule B3 (Paragraph 4) formula consisting of 3 elements and is constructed as follows(Reading left to right).
 - The first *enhancement* element calculates **up to** 7/60ths for long(er) service; plus,
 - The second core element calculates **up to** 20/60ths for the first 20 years of service; plus,
 - The third core element calculates **up to** 20/60ths for the second 20 years of service: plus,

Mathematically this formula can add up to a maximum of 47/60ths, or, 40/60ths + enhancement.

Finally, when added together this produces an ill-health pension calculation but there is no statutorily stated 'cap' of this ill health formula, and to then, on a whim, apply such a 40/60ths 'cap' would be mathematically and legislatively absurd.

14. Next to the 'Notional' or 'Hypothetical' retirement pension.

In the PSR-SI there is no reference to a 'Notional Retirement Pension' but instead it refers to a 'hypothetical' pension in a narrative which *specifically states* a 'cap' is applied to this 'hypothetical' pension at 40/60ths.

15. In the FSR-SI, a 'Notional Retirement Pension' is specifically referred to in Rule B3(Para 5) and a formula for its calculation is provided in Rule B5 (Para 2.(2)).

It is actuarially constructed in a different manner. It is mathematically possible to calculate to 40/60ths but there is no statutorily stated 'cap' to 40/60ths of this Notional Retirement Pension formulae and for it to be then whimsically applied would also be mathematically and legislatively absurd.

16. The FSR-SI makes provision at Rule L4(3) that where there are two contending 'amounts'(pensions) the 'greater' is always paid. This is Rule is applied within Rule B3. There is no such provision in the PSR-SI.

17. No doubt a defence which will eventually be arrived at by any potential adversary that the Rule B3 formula exceeds 40/60ths, so let us deal with that.

Recently an Actuarial Science Lecturer at Manchester University(a recent 30 year actuary practicing in the real world) after studying the formulae in SI129 commented that it was not at all unusual in negotiating for a new pension Scheme for the employers to recognise, by enhancement, a particular type of award and it was his conclusion that the 7/60th *enhancement* element was just such recognition of service.

However, he also added a caveat, that Actuaries are also human and that from time to time anomalous errors in formulae in legislation may occur though are rarely picked up, but nevertheless, unless legislatively corrected, the law is the law.

18. So let us deal with the history of 1992 SI.N;129 which is the pertinent law.

According to the records of the House of Commons Librarian, in supplying supporting documents, this Bill(Order) which led to the enactment of the 1992 Firemen's Pension Scheme Order, Statutory Instrument 1992 No.129 was laid 'on the table' under the 'affirmative resolution procedure' on the 7th February 1992 . This meant that, unless an objection is raised to it, the Bill is not debated either in Committee, or on the floor of the House of Commons – its passage is a formality.

This Bill was authorised by Parliament as an Order and enacted on the 1st March 1992.

This according to the Librarian was not at all unusual because all parties must have been in agreement.

There has been no retrospective amendment to the SI to both identify and/or correct(if it needed correction) any supposed anomalies in the SI.

Right or wrong, fair or unfair, the fact of the matter is that this is the law and, is the law, is the law....

Paul P Burns GIFire E

15th May 2015.