
STATUTORY INSTRUMENTS

1974 No. 540

The Fire Services (Compensation) Regulations 1974

PART V

RETIREMENT COMPENSATION AND PAYMENTS ON DEATH

Entitlement to retirement compensation and other payments

17.—(1) The compensating authority shall, subject to the provisions of these Regulations, pay retirement compensation to any person to whom these Regulations apply and who satisfies the conditions set out in Regulation 12, and shall make the other payments for which provision is made in Regulation 24.

(2) Regulation 13 shall apply in relation to compensation under this Part of these Regulations as it applies in relation to compensation under Part IV.

Additional factors governing payment of retirement compensation

18.—(1) Where retirement compensation is payable under any one of Regulations 19, 20 and 21, compensation shall not be payable under any other of these Regulations.

(2) If a person has attained the age of 40 years at the date on which he lost his employment or suffered a diminution of his emoluments, the compensating authority, in calculating the amount of the retirement compensation payable to him, shall credit him with an additional period of service on the following basis, namely—

- (a) 2 years, whether or not he has completed any years of service after attaining the age of 40 years,
- (b) 2 years for each of the first 4 completed years of his reckonable service between the date when he attained the age of 40 years and the date of the loss or diminution, and
- (c) 1 year for each year of that reckonable service after the fourth, but the additional period so credited shall not exceed the shortest of the following periods, namely—
 - (i) the number of years that, when added to his pensionable service, would amount to the maximum period of service which would have been reckonable by him had he continued in his employment until attaining the age of compulsory retirement, or
 - (ii) the period of his reckonable service, or
 - (iii) 15 years;

and in calculating the amount of any retirement compensation payable to him he shall be regarded as having served as a regular fireman, before 1st April 1972, for the additional period so credited.

In this paragraph the expression “reckonable service” includes any period of service or employment which has been taken into account for the purposes of any award under the Firemen's Pension Scheme to which the person concerned has become entitled.

(3) The benefit in respect of the additional period described in paragraph (2) shall be calculated at the same rate as is applicable for the day immediately preceding the loss or diminution.

(4) When retirement compensation is awarded, or when an award is reviewed under Regulation 30, the additional compensation payable in consequence of any period credited to a person under paragraph (2) may be reduced or withheld to the extent that the compensating authority may think reasonable having regard to the pension scheme (if any) associated with any further employment obtained by him.

(5) The provisions of the Firemen's Pension Scheme relating to the allocation of a pension, that is to say to the surrender by a regular fireman of a portion of his pension in favour of his wife or such other person as is substantially dependent on him, shall, subject to any necessary modifications have effect in relation to any retirement compensation as they have effect in relation to an ordinary or ill-health pension under the Firemen's Pension Scheme; and without prejudice to the generality of the preceding provisions of this paragraph—

- (a) where before the date of the loss or diminution a regular fireman has, under the Firemen's Pension Scheme, allocated an ordinary pension and the allocation has taken effect, the said provisions shall apply as if the retirement compensation were an ordinary pension; and
- (b) the said provisions shall apply as if any reference to the fire authority included a reference to the compensating authority and as if any reference to retirement included a reference to a person becoming entitled to retirement compensation.

(6) In calculating for the purpose of Regulation 19 or 20 the amount of a pension under the Firemen's Pension Scheme, no account shall be taken of any reduction falling to be made in that pension by reason of the provisions of any Act relating to National Insurance until the person concerned reaches the age at which under the Firemen's Pension Scheme the pension would have been so reduced.

Retirement compensation for loss of emoluments payable to a person on attainment of the age of compulsory retirement

19. Subject to the provisions of these Regulations, when a person to whom these Regulations apply reaches the age of compulsory retirement the retirement compensation payable to him for loss of emoluments shall be an annual sum equal to the amount of the short service pension which would have been payable under the provisions of the Firemen's Pension Scheme calculated in accordance with Regulation 18(2).

Retirement compensation payable to a person who would have become entitled to a pension

20.—(1) Where a person to whom these Regulations apply and who has suffered loss of employment before attaining what would have been the age of compulsory retirement—

- (a) becomes incapacitated in circumstances in which, if he had continued to serve as a regular fireman, he would have become entitled to retire with an ill-health pension under the Firemen's Pension Scheme, or
- (b) attains the age at which, had he continued to serve as a regular fireman, he would have been entitled to retire with an ordinary pension, he shall be entitled on the happening of either event to claim—
 - (i) in the case mentioned in head (a) of this paragraph, an annual sum equal to the amount of the ill-health pension which would have been payable under the Firemen's Pension Scheme calculated in accordance with Regulation 18(2), and
 - (ii) in the case mentioned in head (b) of this paragraph, an annual sum equal to the amount of the ordinary pension which would have been payable under the Firemen's Pension Scheme calculated in accordance with Regulation 18(2),

in both cases calculated by reference to his average pensionable pay (or where appropriate pensionable pay) immediately before he ceased to serve as a regular fireman, subject however to paragraph (7).

(2) On receipt of a claim under paragraph (1) the compensating authority shall consider whether the claimant is a person to whom that paragraph applies, and within 13 weeks after the date of the receipt of the claim—

- (a) if they are satisfied that he is not such a person, they shall notify him in writing accordingly, or
- (b) if they are satisfied that he is such a person, they shall assess the amount of compensation payable to him and notify him in writing accordingly;

and notification as described in (a) or (b) above shall, for the purposes of these Regulations, be deemed to be a notification by the authority of a decision on a claim for compensation.

(3) A compensating authority may require any person who makes a claim under paragraph (1) (a) to submit himself to a medical examination by a registered medical practitioner selected by that authority, and if they do so, they shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the authority shall take that report into consideration together with the report of the medical practitioner selected by them.

(4) If a person wishes to receive compensation under this Regulation, he shall so inform the compensating authority in writing within one month from the receipt of a notification under paragraph (2) or, where the claim has been the subject of an appeal, from the decision of the tribunal thereon; and the compensation shall be payable as from the date on which the compensating authority received the claim.

(5) If the compensating authority so agree, in the case of a person who would have become entitled to retire with an ordinary pension, as aforesaid, if his notice of retirement were given with the permission of the fire authority, it shall be assumed for the purposes of this Regulation that he would have obtained such permission.

(6) If the compensating authority so agree, in the case of a person in whose case the Firemen's Pension Scheme had effect subject to the modifications set out in section 27(3) of the Fire Services Act 1947, no account shall be taken, for the purposes of this Regulation, of any modification which has the effect that—

- (a) a person's entitlement to a pension is conditional on the chief officer of the fire brigade concerned giving a certificate that he has served with zeal and fidelity, or
- (b) the grant of a pension may be refused on account of misconduct or on account of any of the grounds on which the pension, if granted, would be liable to be forfeited or withdrawn.

(7) In calculating the amount of any compensation under this Regulation, where the compensating authority, by virtue of Regulation 18(2), have credited the person with an additional period of service, no account shall be taken of any additional period beyond the period which he could have served, had he not lost his employment, before the date on which the claim was received by the compensating authority.

Retirement compensation for diminution of emoluments

21.—(1) A person to whom these Regulations apply and who has suffered a diminution of his emoluments shall be entitled to receive retirement compensation in accordance with the provisions of this Regulation.

(2) The provisions of Regulations 19 and 20 shall apply to any such person as if he had suffered loss of employment immediately before the diminution occurred; but the amount of retirement compensation payable shall be the amount which would have been payable in respect of loss of employment multiplied by a fraction of which—

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- (a) the numerator is the amount by which his pensionable emoluments have been diminished, and
- (b) the denominator is the amount of his pensionable emoluments immediately before they were diminished;

but in calculating, for the purpose of Regulation 19 or 20, the amount of a pension under the Firemen's Pension Scheme, no account shall be taken of any provision of that Scheme by which a pension would be reduced beyond the age of 65 years.

Superannuation contributions

22.—(1) A person entitled to retirement compensation under Regulation 19 or 20 shall pay to the compensating authority an amount equal to any award by way of repayment of aggregate contributions received by him under the Firemen's Pension Scheme on ceasing to be a regular fireman but, where he has made the said payment to the compensating authority before becoming entitled to retirement compensation as aforesaid, that authority may, at his request before he becomes so entitled, refund the payment to him; and if the said payment is not made to the compensating authority, or is refunded by them, the compensation shall be reduced by an annual amount the capital value of which is equal to the amount of the said award under the Firemen's Pension Scheme.

(2) In the case of a person who undertook, for the purposes of the Firemen's Pension Scheme, to make payments by regular instalments in respect of previous service, the compensating authority shall be empowered to deduct the balance of the sum outstanding under the undertaking when he ceased to serve as a regular fireman, if any, from any payments to him of retirement compensation.

(3) Any sums paid to a compensating authority under this Regulation, in respect of returned contributions under the Firemen's Pension Scheme shall be applied for the payment of compensation which the authority is liable to pay under this part of these Regulations.

Retirement compensation of a person who obtains further pensionable employment

23.—(1) Where a person to whom these Regulations apply, after suffering loss of employment or diminution of emoluments as a regular fireman, enters employment in which he is subject to a pension scheme and thereafter becomes entitled to reckon for the purposes of that scheme any service or period of contribution which falls to be taken into account for the purpose of assessing the amount of any retirement compensation payable to him, his entitlement to retirement compensation shall be reviewed, and, subject to the provisions of this Regulation, no retirement compensation shall be payable in respect of that service or period unless the annual rate of the emoluments to which he was entitled immediately before the loss or diminution exceeds the annual rate on entry of the emoluments of the new employment, and any retirement compensation so payable to him shall, insofar as it is calculated by reference to remuneration, be calculated by reference to the difference between the said annual rates.

(2) The provisions of this Regulation shall not operate to increase the amount of any retirement compensation payable in respect of diminution of emoluments beyond the amount which would have been payable if the person had attained the age of compulsory retirement immediately before he ceased to hold the employment in which he suffered the diminution of emoluments.

Compensation payable on the death of a claimant

24.—(1) Where a person to whom this part of these Regulations applies dies, payments in accordance with this Regulation shall be made to or for the benefit of his widow or child or to his personal representatives or as the case may be, to trustees empowered by him to stand possessed of any benefit under the Firemen's Pension Scheme.

(2) Where the widow or child has become, or but for the person's loss of employment as a regular fireman would have become, entitled to benefits under the Firemen's Pension Scheme, the widow or child, as the case may be, shall (subject to the provisions of this Regulation) be entitled to compensation calculated from time to time in accordance with the methods prescribed by the Firemen's Pension Scheme modified as follows:—

- (a) where the person dies before becoming entitled to receive retirement compensation, and the Firemen's Pension Scheme provides that when he dies in service his widow or child shall be entitled for any period to a benefit equal to his pensionable pay, the annual rate of compensation for that period shall be equal to the annual amount of his long-term compensation calculated in accordance with paragraphs (1) to (3) of Regulation 14;
- (b) where the person dies before becoming entitled to receive retirement compensation and the Firemen's Pension Scheme provides that when he dies in service his widow or child shall be entitled for any period to a benefit calculated by reference to the pension or ill-health pension which would have been payable to him if he had retired immediately before his death, the compensation for that period shall be calculated by reference to the retirement compensation to which he would have been entitled under Regulation 20 if that Regulation had been applied to him immediately before his death;
- (c) where a person dies after becoming entitled to receive retirement compensation and the Firemen's Pension Scheme provides that when he dies after having retired his widow or child shall be entitled for any period to a benefit equal to his pension, the annual rate of compensation for that period shall be equal to the annual amount of retirement compensation;
- (d) where a person dies after he has become entitled to receive retirement compensation and the Firemen's Pension Scheme provides that when he dies after having retired his widow or child shall be entitled for any period to a benefit calculated by reference to his pension, the annual rate of compensation for that period shall be calculated by reference to the annual amount of retirement compensation that would have been payable to him but for any reduction or suspension under Regulation 28(1).

(3) Calculation of the amounts described in paragraph (2) shall be subject to the following adjustments, that is to say—

- (a) where any retirement compensation has been surrendered under Regulation 18(5) or compounded under Regulation 31 any sum payable under paragraph (2)(b) or (d) shall be calculated as if such surrender or compounding had not taken place;
- (b) if immediately before his death the person's long-term compensation was reduced under Regulation 14(4) or 30 or his retirement compensation was reduced or suspended under Regulation 28(1) by reason of employment in which he was subject to a pension scheme and the widow or child is entitled under that scheme for any period to a benefit equal to his pensionable remuneration, regard shall be had to any such reduction or suspension for the purpose of sub-paragraphs (a) and (c).

(4) If the person in question suffered a diminution of emoluments, the provisions of paragraph (2) shall apply with the substitution of references to diminution of emoluments for references to loss of employment, and the sums payable to his widow or child shall be calculated, as if he had suffered loss of employment and as if the loss of emoluments occasioned thereby had been equivalent to the amount of the diminution.

(5) Compensation payable in accordance with this Regulation shall be payable on the like conditions in all respects as a widow's pension or, as the case may be, a child's allowance under the Firemen's Pension Scheme and, accordingly, the provisions of that Scheme (including any provision for the commutation of a pension or allowance for a gratuity) shall apply, subject to any necessary modifications, in relation to such compensation as they apply in relation to such a pension or allowance.

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(6) Except where retirement compensation payable to the deceased person has been reduced under Regulation 22(1), the payments by way of compensation under this Regulation shall, in the aggregate, be reduced by an amount the capital value whereof is equal to the amount of any award by way of repayment of aggregate contributions received by him under the Firemen's Pension Scheme and either not paid to the compensating authority in accordance with Regulation 22(1) or refunded to him by that authority; and, where payments under this Regulation are made to or for the benefit of two or more persons, the said reduction shall be apportioned between those payments according to the capital value thereof.

(7) Where a person to whom this part of these Regulations applies dies and, but for his loss of employment as a regular fireman, the fire authority would have had discretion to grant a gratuity to a person who was substantially dependent on him immediately before his death, the compensating authority shall have a like discretion to grant a gratuity calculated in accordance with the methods prescribed by the Firemen's Pension Scheme.

(8) In this Regulation and in Regulation 26 the expression "child" has the same meaning as in the Firemen's Pension Scheme and related expressions shall be construed accordingly.

Intervals for payment of compensation under Part V

25. Any compensation awarded under this Part of these Regulations to or in respect of any person, shall be payable in advance at intervals equivalent to those at which the corresponding benefit would have been payable under the Firemen's Pension Scheme or at such other intervals as may be agreed between the person entitled to receive the compensation and the compensating authority.