

RULE C4

Spouse's or civil partner's accrued pension

**Rule C4 sets out the terms of eligibility for the spouse or civil partner of a former firefighter or optant-out who was entitled to a deferred pension.
Part III of Schedule 3 explains how the award should be calculated.**

Eligibility for spouse's or civil partner's accrued award

Rule C4(1) states that if you are or were a regular firefighter with entitlement to a deferred pension, whether or not that pension has come into payment at the time of your death, your widow(er) or civil partner will be entitled to an accrued pension.

Under Rule C4(2), the same provisions apply even if, before 6 April 2006, your deferred pension has been totally commuted under Rule B8 (i.e. it was such a small pension when it became due for payment that your fire and rescue authority converted it into a one-off lump sum payment). See "Limitations" below for the effect of commutation under Rule B8 on or after 6 April 2006.

Exclusions

This Rule will only apply to an optant-out if, at the time of opting-out, the firefighter had sufficient pensionable service to be awarded a deferred pension.

Limitations

Rule C10 explains that if a pension sharing order has been issued by a court on divorce, dissolution of civil partnership, or annulment, a spouse's or civil partner's benefits under Rule C4 will be reduced in line with the required reduction in the firefighter's own benefits.

See Rule C5 (post-retirement marriage) and Rule C8 (limitation where spouses or civil partners living apart) for the adjustment or limitation of benefits in these circumstances.

See pages C Gen 2 for the terms of calculation if you have any service before 1 April 1972.

If your pension under Part B had been commuted under Rule B8 on or after 6 April 2006, the effect of the tax regime operative from that date would mean that the commutation would remove all entitlement to dependants' benefits and so a pension under C4 could not be paid. However, commutation under Rule B8 before 6 April 2006 would not affect dependants' benefits.

Method of calculation: firefighter with all service after 31 March 1972

Paragraph 3 of Part III of Schedule 3 says that instead of having an ordinary pension calculated on the standard principles (which follow), the widow(er) or civil partner could request payment of a flat rate award as set out in Rule E9.

There are, however, a couple of exceptions to this.

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Rule C4 (continued)

Method of calculation: firefighter with all service after 31 March 1972 (continued)

It is not an option if the pensionable service used in calculating your deferred pension was –

- less than 5 years if you became entitled to the pension before 6 April 1988, or
- less than 2 years if you became entitled to the pension on or after 6 April 1988,

i.e. if your entitlement to a deferred benefit arose because your qualifying service (see the definition in “Eligibility for a deferred pension” in the explanation of Rule B5) was longer than your pensionable service.

Nor is a flat rate pension an option if you were a serving firefighter who was an optant-out at the date of death.

A flat rate award was the standard award for a spouse under early versions of the FPS. It would be most unusual nowadays for it to produce a greater sum than that provided by the standard principles given in Part III of Schedule 3.

Rule C4(3) requires that, in the case of a civil partner, the accrued pension would be that assessed as for a spouse but pro rated according to:

$$\frac{\text{service after 5.4.88}}{\text{total service}}$$

The calculation formula in paragraph 2 of Part III of Schedule 3 caters for all firefighters, including those who have service before 1 April 1972. However, in this part of the Commentary we are looking only at those whose service was all after 31 March 1972.

If all your service was after 31 March 1972 then a spouse's accrued pension would be –

$$1/2 \times \text{your deferred pension}$$

and a civil partner's pension would be –

$$1/2 \times \text{your deferred pension} \times \frac{\text{service after 5.4.88}}{\text{total service}}$$

Your deferred pension for this purpose would be the full amount of pension before any reductions are applied in respect of –

- commutation (Rule B7)
- allocation (Rule B9)
- National Insurance modification (Part VII of Schedule 2) – generally firefighters with service before 1 April 1980

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Rule C4 (continued)

Method of calculation: firefighter with all service after 31 March 1972 (continued)

If your pension was subject to a pension sharing order issued by a court on divorce, dissolution of civil partnership, or annulment, the spouse's or civil partner's pension will be subject to a reduction as appropriate in line with the reduction to your pension – see Rule C10.

It does not matter if your deferred pension had not come into payment at the time of your death, your widow(er) or civil partner will receive the spouse's or civil partner's accrued pension calculated on the same principles as above.

Effect of part-time service

If the firefighter had a period of part-time service, Schedule 3 Part III, paragraph 2(3) requires that the firefighter's deferred pension should be assessed taking account of Schedule 2 Part VIA (calculation of awards for part-time service). The pages of the Commentary which cover Rule B13 explain this Part of Schedule 2 and the pages which give details of Rule B5 show the effect of part-time service on the calculation of a deferred pension.

Tax

Dependants' pension benefits are not tested for Lifetime Allowance purposes following the death of a pension scheme member, but the aggregate of dependants' scheme pensions must not exceed the amount of the member's scheme pension at the date of his/her death.

Payment

Payment will be made in accordance with Rules L3 and L5.

Example

Examples of the assessment of a spouse's accrued award and civil partner's accrued award are given on pages C4-Example 1 and C4-Example 2 respectively.

Useful reference source

- FSC 15/1978 (addendum 2): clarification of circumstances in which flat rate award can be applied as an alternative to an accrued pension
- FSC 39/1978: further clarification of circumstances in which flat rate award can be applied as an alternative to an accrued pension
- FSC 30/2004: introduction of pension provisions for part-time regular firefighters
- FPSC 5/2005: introduction of survivor's benefits for civil partners

Points To Note

1. This pension is called an “accrued” pension to distinguish it from other spouse's and civil partner's awards. It is based on the proportion of full pension rights which you had accrued (hence its name) at the time of leaving the FPS. It is the spouse's or civil partner's pension based on your deferred pension. It cannot be called a spouse's or civil partner's deferred pension because, unlike your pension, it is not deferred.

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Rule C4 (continued)

Points To Note continued

2. Note that if you were living apart from your husband/wife/civil partner at the date of your death, pension rights are limited in accordance with Rule C8.
3. There is also a limitation on benefits in the case of a marriage or civil partnership which takes place after a firefighter has retired – see Rule C5.
4. Rule E8 will allow a “top-up” payment to the spouse's or civil partner's accrued pension if, at the time of your death you were either –
 - a serving regular firefighter, or
 - in receipt of payments of your deferred pension.
5. The Rule E8 “top-up” would increase the spouse's or civil partner's accrued pension, for the first 13 weeks following your death, to –
 - the level of your weekly average pensionable pay if still serving as a firefighter, or
 - the level of your deferred pension if in payment.

If, however, you were to die after leaving the service and before your deferred pension comes into payment, the 13-week “top-up” under Rule E8 would not apply.
6. Following divorce or dissolution of a civil partnership your former spouse or civil partner does not have entitlement to benefits as a surviving spouse or civil partner when you die.
7. Payment of a spouse's or civil partner's pension will cease if
 - your widow(er) remarries or forms a civil partnership, or
 - your civil partner forms a subsequent civil partnership or marries– see the explanation of Rule C9.
8. A spouse's or civil partner's pension is reduced if a firefighter's pension is reduced in accordance with a pension sharing order made by a court on divorce, dissolution of civil partnership, or annulment. However, if following divorce, dissolution of civil partnership, annulment or judicial separation, a firefighter's pension has been subject to an “earmarking” order this will have no effect on the spouse's or civil partner's entitlement to an accrued pension. See Annexe 14 for more information about the effect of divorce, etc. on pension rights.
9. Pension provisions for part-time regular firefighters were introduced on 13 September 2004.
10. Dependant's benefit provisions were introduced for civil partners on 5 December 2005 by legislation made under the Civil Partnership Act 2004. Regulations made under the Act required that survivor benefits for civil partners should be based on service from 6 April 1988. This was the date from which survivor benefit provision for male and female dependants was equalized for all pension schemes. To take account of the effect of double accrual of service in the case of many benefits provided by the FPS, a civil partner's award is usually calculated as for a spouse's award and then pro rated:

$$\text{civil partner's award} = \text{spouse's award} \times \frac{\text{member's service after 5.4.1988}}{\text{member's total service}}$$

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Example of assessment of spouse's accrued pension

Example A

A former firefighter dies after his deferred pension has been put into payment. His deferred pension was £12,000 a year before reductions for allocation and commutation and before the addition of Pensions Increase.

His spouse will be entitled to an accrued pension of half his deferred pension.

Formula: $\frac{1}{2}$ x deferred pension before commutation, allocation and Pensions Increase

Spouse's accrued pension will be:

$$\begin{aligned} & \frac{1}{2} \times \text{£}12,000.00 \\ & = \text{£}6,000.00 \text{ a year} \end{aligned}$$

Example B

A former firefighter dies after leaving the fire and rescue service, not as a result of a qualifying injury, having opted out of the FPS. When she opted out she had more than 2 years' service and so had entitlement to a deferred pension calculated as £4,000 a year before the addition of Pensions Increase.

Her spouse will be entitled to a spouse's accrued pension which will be half of her deferred pension.

Formula: $\frac{1}{2}$ x deferred pension before Pensions Increase

Spouse's accrued pension will be:

$$\begin{aligned} & \frac{1}{2} \times \text{£}4,000.00 \\ & = \text{£}2,000.00 \text{ a year} \end{aligned}$$

The spouse's accrued pensions shown above will be increased by Pensions Increase from the date at the end of the averaging period used for working out APP, i.e. from the day after the firefighter's last day of service in Example A and from the day after the firefighter opted out in Example B. The spouse's pensions will continue to be increased in this way each year. See Annex 10 for more information about Pensions Increase and how it is applied.

In Example A, because the deferred pension was in payment at the date of the former firefighter's death, for the first 13 weeks following his death the spouse's accrued pension is increased to a rate which, together with any children's allowance, is not less than the firefighter's weekly rate of pension. See Rule E8.

In Example B, however, because the deferred pension had not come into payment at the date of the firefighter's death, the spouse's accrued pension will not be increased for the first 13 weeks. See Rule E8.

Another example follows . . .

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Example of assessment of spouse's accrued pension (continued)

Example C

A former firefighter dies after his deferred pension has been put into payment. He had served for 10 years at whole-time and 4 years at part-time (half-time). The deferred pension payable had he been whole-time would have been £7,000; after applying the formula in Schedule 2 Part VIA it became £6,000.

His spouse will be entitled to an accrued pension of half his deferred pension.

Formula: $\frac{1}{2}$ x deferred pension before commutation, allocation and Pensions Increase

Spouse's accrued pension will be:

$$\begin{aligned} & \frac{1}{2} \times £6,000 \\ & = £3,000.00 \text{ a year} \end{aligned}$$

The spouse's accrued pension shown above will be increased by Pensions Increase from the date at the end of the averaging period used for working out APP, i.e. from the day after the firefighter's last day of service. The spouse's pension will continue to be increased in this way each year. See Annex 10 for more information about Pensions Increase and how it is applied.

Because the deferred pension was in payment at the date of the former firefighter's death, for the first 13 weeks following his death the spouse's accrued pension is increased to a rate which, together with any children's allowance, is not less than the firefighter's weekly rate of pension. See Rule E8.

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Example of assessment of civil partner's accrued pension

Example A

A former firefighter dies after her deferred pension has been put into payment. Her deferred pension was £10,000 a year before reductions for allocation and commutation and before the addition of Pensions Increase. The deferred pension was based on 24 years' service of which 18 were after 5 April 1988.

Her civil partner will be entitled to a civil partner's accrued pension of half of the firefighter's pension having regard only to service after 5 April 1988.

Formula: $\frac{1}{2} \times \text{deferred pension before commutation, allocation and Pensions Increase} \times \frac{\text{service after 5.4.88}}{\text{total service}}$

Spouse's accrued pension will be:

$$\frac{1}{2} \times £10,000.00 \times \frac{18}{24}$$
$$= £3,750 \text{ a year}$$

Example B

A former firefighter dies after leaving the fire and rescue service, not as a result of a qualifying injury, having opted out of the FPS. When he opted out he had entitlement to a deferred pension of £4,000 a year before the addition of Pensions Increase. The pension was based on 6 years' service accrued at the date of opting out only one of which was after 5 April 1988.

His civil partner will be entitled to a civil partner's accrued pension which will be half of the firefighter's deferred pension having regard only to service after 5 April 1988.

Formula: $\frac{1}{2} \times \text{deferred pension before Pensions Increase} \times \frac{\text{service after 5.4.88}}{\text{total service}}$

Civil partner's accrued pension will be:

$$\frac{1}{2} \times £4,000.00 \times \frac{1}{6}$$
$$= £333.33 \text{ a year}$$

The civil partner's accrued pensions shown above will be increased by Pensions Increase from the date at the end of the averaging period used for working out APP, i.e. from the day after the firefighter's last day of service in Example A and from the day after the firefighter opted out in Example B. The civil partner's pensions will continue to be increased in this way each year. See Annexe 10 for more information about Pensions Increase and how it is applied.

In Example A, because the deferred pension was in payment at the date of the former firefighter's death, for the first 13 weeks following her death the civil partner's accrued pension is increased to a rate which, together with any children's allowance, is not less than the firefighter's weekly rate of pension. See Rule E8.

In Example B, however, because the deferred pension had not come into payment at the date of the firefighter's death, the civil partner's accrued pension will not be increased for the first 13 weeks. See Rule E8.