

RULE C5

**Limitation on award to spouse or civil partner
by reference to date of marriage or formation of civil partnership**

Rule C5 explains how a surviving spouse's or civil partner's benefits may be affected if you marry after your last day of service as a regular firefighter.
Part IV of Schedule 3 explains how awards should be adjusted.

Effect of post-retirement marriage or civil partnership

Rule C5(1) does not permit the payment of –

- an ordinary award under Rule C1, or
- an accrued pension under Rule C4

unless the surviving spouse or civil partner was married to, or had a civil partnership with, the firefighter before he or she ceased to be a firefighter.

If the surviving spouse or civil partner married or formed a civil partnership with the deceased FPS member after he/she had ceased to be a firefighter, Rule C5(2) substitutes, for the above benefits, a pension calculated in accordance with Part IV of Schedule 3. Rule C5(3) requires, in the case of a civil partner, that the pension calculated in accordance with Part IV of Schedule 3 should be pro rated having regard to the service after 5 April 1988 as a proportion of total service.

Method of calculation

For a widow(er), the pension in respect of a post-retirement marriage will be the greater of –

- a requisite benefit calculated as:

$$\text{pensionable service after 5.4.1978} \times \frac{1}{160} \times \text{firefighter's average pensionable pay}^*$$

or

- $\frac{1}{2} \times \frac{\text{service after 5.4.1978}}{\text{total service}} \times \text{firefighter's pension or notional pension\#}$

For a civil partner, the pension in respect of a post-retirement civil partnership will be the greater of –

- a requisite benefit calculated as:

$$\text{pensionable service after 5.4.1988} \times \frac{1}{160} \times \text{firefighter's average pensionable pay}^*$$

or

- $\frac{1}{2} \times \frac{\text{service after 5.4.1988}}{\text{total service}} \times \text{firefighter's pension or notional pension\#}$

*Average pensionable pay is explained in Rule G1

The pension or notional pension to be used is explained on the next page

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Rule C5 (continued)

Method of calculation (continued)

In the formulae on the previous page there is reference to "the firefighter's pension or notional pension".

The pension or notional pension to use depends upon the type of pension which would have been payable, had the marriage or civil partnership not taken place after retirement.

Pension payable to spouse or civil partner if marriage or civil partnership had not taken place after retirement

Pension or notional pension to be used in calculation

Spouse's or civil partner's ordinary pension

⇒ The firefighter's ordinary, short service or ill-health pension payable at date of death

Spouse's or civil partner's accrued pension

⇒ The firefighter's deferred pension

Effect of part-time service

If the firefighter had part-time service then this must be taken into account in the assessment of the firefighter's pension or notional pension by referring to the formula in paragraph 2 of Part VI A of Schedule 2. To see how this would apply, see Rule B1 (firefighter's ordinary pension), Rule B2 (firefighter's short service award), Rule B3 (firefighter's ill-health award) and Rule B5 (firefighter's deferred pension).

Payment date

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

Example

Examples of the assessment of a spouse's award and a civil partner's award where the marriage or civil partnership took place after retirement are given on pages C5-Example 1 and C5-Example 2 respectively.

Useful reference source

- FPSC 5/2005: introduction of survivor's benefits for civil partners

Points To Note

1. For each of the 13 weeks following your death, a payment equivalent to your weekly rate of pension would be paid to your spouse or civil partner under Rule E8.
2. Note that if you were living apart from your spouse or civil partner at the date of your death, pension rights are limited in accordance with Rule C8.
3. The firefighter's pension or notional pension used for calculating the spouse's or civil partner's pension excludes Pensions Increase (see Annexe 10). The spouse's or civil partner's own entitlement to Pensions Increase makes up for this.

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Rule C5 (continued)

Points To Note continued

4. 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.
5. Rule L4 prevents a widow(er) or civil partner from receiving more than one pension in respect of the firefighter's death unless the firefighter had more than one period of service counting for dependant's benefits.
6. 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.
7. Forfeiture of a spouse's or civil partner's pension is possible but uncommon. However, if a firefighter's pension is forfeited the spouse's or civil partner's pension may, too, be reduced or lost. In this case, though, it must not be reduced below the level of the spouse's or civil partner's GMP (see the explanation of Rule J1) if there is one.
8. A spouse's or civil partner's pension is reduced if the 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, judicial separation, dissolution of civil partnership, or annulment, a firefighter's pension has been made subject to an "earmarking" order this will have no effect on the spouse's entitlement to a pension under Rule C5. 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.
11. With effect from 1 April 2006, the injury provisions set out in the FPS were transferred to the Firefighters' Compensation Scheme. Before 1 April 2006, Rule C5(1) did not permit payment of a special award under Rule C2 or an augmented award under Rule C3 unless the surviving spouse or civil partner was married to, or had a civil partnership with, the firefighter before he or she ceased to be a firefighter. If the surviving spouse or civil partner married or formed a civil partnership with the deceased FPS member after he/she had ceased to be a firefighter, the pension or notional pension to be used in the "Method of calculation" would be the ill-health pension to which the firefighter would have been entitled if he/she had ceased to serve in circumstances in which such an award would be payable.

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Example of assessment of a spouse's pension where marriage after retirement

Example A

A former firefighter dies after retirement. He had married after his last day of service as a firefighter. He had retired with an ill-health pension of £12,000 based on 30 years' service of which 18 were after 5 April 1978. His average pensionable pay (APP) was £15,000

His widow will be entitled to the greater of a requisite benefit or a proportion of the ordinary pension she would have received, had the marriage not taken place after retirement, based on service after 5 April 1978. The ordinary pension would have been half of the firefighter's ill-health pension.

Formula: Greater of

$$\text{service after 5.4.1978} \times \frac{1}{160} \times \text{APP}$$

or

$$\frac{\text{service after 5.4.1978}}{\text{total service}} \times \frac{1}{2} \times \text{firefighter's pension}$$

Spouse's pension will be:

Greater of

$$18 \times \frac{1}{160} \times \text{£15,000.00} = \text{£1,687.50}$$

or

$$\frac{18}{30} \times \frac{1}{2} \times \text{£12,000.00} = \text{£3,600.00}$$

therefore spouse's pension will be £3,600.00 a year

The spouse's pension above will be increased by Pensions Increase from the date at the end of the averaging period used for working out APP, i.e. normally 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 Annexe 10 for more information about Pensions Increase and how it is applied.

For the first 13 weeks following the firefighter's death, the spouse's pension is increased to a rate which, together with any children's allowances, is not less than the firefighter's weekly pensionable pay – see Rule E8.

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**Example of assessment of a civil partner's pension where
civil partnership formed after retirement**

Example A

A former firefighter dies after retirement. He had formed a civil partnership after his last day of service as a firefighter. He had retired with a deferred pension of £6,000 based on 10 years' service of which 5 were after 5 April 1988. His average pensionable pay (APP) was £28,000.

His civil partner will be entitled to the greater of a requisite benefit or a proportion of the firefighter's deferred pension, both based on service after 5 April 1988.

Formula: Greater of

$$\text{service after 5.4.1988} \times \frac{1}{160} \times \text{APP}$$

or

$$\frac{\text{service after 5.4.1988}}{\text{total service}} \times \frac{1}{2} \times \text{firefighter's pension}$$

Civil partner's pension will be:

Greater of

$$5 \times \frac{1}{160} \times £28,000.00 = £ 875.00$$

or

$$\frac{5}{10} \times \frac{1}{2} \times £6,000.00 = £1,500.00$$

therefore civil partner's pension will be £1,500.00 a year

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

For the first 13 weeks following the firefighter's death, the civil partner's pension is increased to a rate which, together with any children's allowances, is not less than the firefighter's weekly pensionable pay – see Rule E8