

Limitation where spouses or civil partners living apart

Rule C8 explains a limitation on death benefits if husband and wife, or civil partners were living apart at the date of death. Part V of Schedule 3 shows how a minimum level of pension should be calculated.

Awards affected by the limitation

Rule C8(1) explains that if you were living apart from your spouse or civil partner at the time of your death, he or she will not be entitled to any award under Rules C1, and C4 to C7 – this is the whole range of spouse’s and civil partner's benefits.

Substituted award – the requisite benefit pension

Rule C8(2) says that if your spouse or civil partner is unable to receive any award because of Rule C8(1) but otherwise would have been entitled to -

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

then he or she will, instead, be entitled to receive a “requisite benefit pension” calculated under Part V of Schedule 3.

A requisite benefit pension for a spouse is calculated as –

$$\frac{\text{pensionable service after 5 April 1978}}{160} \times \text{average pensionable pay}^*$$

and, in the case of a civil partner, as –

$$\frac{\text{pensionable service after 5 April 1988}}{160} \times \text{average pensionable pay}^*$$

* average pensionable pay is explained in Rule G1

This is the minimum level of benefit payable. It could be a greater sum if –

- at the time of death you were making maintenance payments, or
- the fire and rescue authority decide to increase the amount, at their discretion.

See "Effect of maintenance payments" and "Discretion of the fire and rescue authority" below.

Rule C10 explains that if a pension sharing order has been issued by a court on divorce, dissolution of a civil partnership, or annulment, a spouse’s or civil partner's benefit under Rule C8 must be reduced in line with the firefighter's own reduction in benefits.

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Rule C8 (continued)

Effect of part-time service

If the firefighter had a period of part-time service, Schedule 3 Part V requires that the requisite benefit pension should be calculated using the formula in Schedule 2 Part VIA, i.e.

$$\frac{A \times (B + C)}{D} \quad \text{where}$$

"A" is the amount calculated under Schedule 3 Part V if average pensionable pay were whole-time (i.e. A is the spouse's or civil partner's requisite benefit that would be payable had the firefighter's service been whole-time throughout)

"B" is the firefighter's period of whole-time pensionable service after 5.4.1978 (after 5.4.1988 in the case of a civil partner)

"C" is the firefighter's pro rated part-time pensionable service after 5.4.1978 (after 5.4.1988 in the case of a civil partner)

"D" is the total period of pensionable service after 5.4.1978 (after 5.4.1988 in the case of a civil partner).

Neither (B + C) nor D should exceed 30 years.

Effect of maintenance payments

Rule C8(3), (4), and (5) deal with the effect of maintenance payments. If, at the time of your death, you were paying maintenance by agreement or required to pay maintenance by a court order –

- for the support of your spouse or civil partner, or
- to your spouse or civil partner for the support of his/her child

then if the amount or required amount of maintenance is greater than the requisite benefit pension, the spouse's or civil partner's pension would be increased to the level of maintenance. **But**, this increased pension must not exceed the pension your spouse or civil partner would have received under Rules C1 or C4 had you not been living separately (remembering to take note of the effect of Rule C10 in the event of a pension sharing order).

Discretion of the fire and rescue authority

Regardless of whether or not you were paying, or required to pay, maintenance and taking account of all the circumstances the fire and rescue authority can, if they wish, pay to your spouse or civil partner –

- an increased rate of pension up to the level of the pension he/she would have received if not living separately, and/or
- part or the whole of any lump sum he/she would have received if not living separately

remembering to take note of the effect of Rule C10 in the event of a pension sharing order.

This discretionary power is given in Rule C8(6) and (7).

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Rule C8 (continued)

Discretion of the fire and rescue authority (continued)	Note that the fire and rescue authority do not have to use this power and that they do not have to increase the level of the award to the full amount which would have been paid had you not been living separately. If they do choose to pay an increased pension, the period for which it will be paid will be at the discretion of the fire and rescue authority, too.
Payment	Payment will be made in accordance with Rules L3 and L5 (except where the fire and rescue authority has a discretion as outlined above.)
Example	Examples of the assessment of a spouse's or civil partner's award where husband and wife or civil partners were living separately are given on pages C8-Example 1 and C8-Example 2 respectively.
Useful reference source	<ul style="list-style-type: none">• FSC 39/1978: introduced the requisite benefit as a minimum level of pension payable where husband and wife living apart at the time of death.• 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. "Living apart" is not defined in the FPS but it should probably be construed as meaning more than physical separation and implying a recognition by at least one spouse or civil partner that the marriage or civil partnership is at an end.
2. The requisite benefit pension was introduced in 1978 as a contracting-out requirement (see Annexe 8 which describes the effect of the State pension scheme on the provisions of the FPS).
3. Another contracting-out requirement is contained in Rule J1 which states that the level of widow's or civil partner's pension should not be less than the Guaranteed Minimum Pension.
4. It is important to note the distinction between what your widow(er) or civil partner is **entitled** to and what he or she **may** receive at the discretion of the fire and rescue authority.
5. 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.

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Rule C8 (continued)

6. 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 a pension under Rule C8. See Annexe 14 for more information about the effect of divorce, etc, on pension rights.
7. Pension provisions for part-time regular firefighters were introduced on 13 September 2004.
8. 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.
9. 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.
10. References to entitlement to an award under Rule C2 (spouse's or civil partner's special award) and Rule C3 (spouse's or civil partner's augmented award) were removed from Rule C8 with effect from 1 April 2006 when the injury provisions were transferred from the FPS to the Firefighters' Compensation Scheme.

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Example of assessment of spouse's pension where husband and wife living apart

Example A

A firefighter who commenced service on 6.4.1976 dies in service, not as a result of a qualifying injury, on 5.4.2001. At the time of his death he had 25 years of service, his average pensionable pay (APP) was £21,000 and he was separated from his wife. He was paying maintenance of £4,000 a year to her.

His spouse will not be entitled to a pension under any other Rules. Under this Rule she will be entitled to a "requisite benefit pension" only (i.e. a minimum level of pension required under contracting-out rules). This is based on service after 5.4.1978, the date when the FPS contracted out of the State Earnings Related Pension Scheme (see Annexe 8 for details of the State pension scheme). However, because his spouse is receiving maintenance payments, if the requisite benefit pension is lower it must be increased to the level of maintenance. Also, the authority may, if they wish, pay her a greater amount not exceeding the level of benefits she would have been paid had she not been living separately from her husband. The base pension for a full spouse's pension in this case would be the standard ill-health pension paid on death in service.

Limited pension

Formula: Pension will be greater of –

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

a sum equal to annual maintenance payments

Spouse's limited pension will be the greater of:

$$\begin{aligned} &\text{service from 6.4.1978 to 5.4.2001} \times \frac{1}{160} \times \text{£21,000.00} = 23 \times \frac{1}{160} \times \text{£21,000.00} \\ &= \text{£3,018.75 a year, or} \\ &\text{a sum equal to annual maintenance of £4,000.00 a year} \\ &\text{therefore spouse's limited pension will be £4,000.00 a year} \end{aligned}$$

Limited pension increased at fire and rescue authority's discretion

Formula: $\frac{1}{2} \times \left[\frac{7}{60} + \frac{\text{service to 20 years}}{60} + \frac{2 \times \text{service in excess of 20 years}}{60} \right] \times \text{APP}$

Spouse's pension without limit would be:

$$\begin{aligned} &\frac{1}{2} \times \left[\frac{7}{60} + \frac{20}{60} + \frac{2 \times 5}{60} \right] \times \text{£21,000.00} = \frac{1}{2} \times \frac{37}{60} \times 21,000.00 \\ &= \text{£6,475.00 a year} \end{aligned}$$

The fire and rescue authority can increase the limited pension by any amount up to the full pension for such period as they choose.

The spouse's limited pension (or increased pension) 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.

Under Rule E8, for the first 13 weeks following a firefighter's death, the spouse's pension is normally increased to a rate which, together with any children's allowances, is not less than the firefighter's weekly pensionable pay. This does not apply in the case of a limited award under Rule C8 unless the fire and rescue authority, at their discretion, permit it.

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Example of assessment of spouse's pension where husband and wife living apart (continued)

Example B

A former firefighter dies after retirement. He retired on 5.4.1980 with a short service pension of £4,000 before commutation or allocation. His average pensionable pay (APP) was £30,000. He was living separately from his wife at the date of death and was not paying maintenance to her.

His spouse will not be entitled to a pension under any other Rules. As in Example A, she will be entitled to a "requisite benefit pension" only (i.e. a minimum level of pension required under contracting-out rules) unless the fire and rescue authority, at their discretion, choose to increase her pension to an amount not exceeding the level of benefits to which she would be entitled had she not been living separately from her husband. The base pension for a spouse's pension in this case would be the short service pension to which her husband was entitled (before commutation or allocation or Pensions Increase).

Limited pension

Formula: pensionable service after 5.4.1978 $\times \frac{1}{160}$ \times APP

Spouse's limited pension will be:

$$\begin{aligned} & \text{service from 6.4.1978 to 5.4.1980} \times \frac{1}{160} \times \text{£30,000.00} = 2 \times \frac{1}{160} \times \text{£30,000.00} \\ & = \text{£375.00 a year} \end{aligned}$$

Limited pension increased at fire and rescue authority's discretion

Formula: $\frac{1}{2}$ \times firefighter's short service pension

Spouse's pension without limit would be:

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

The fire and rescue authority can increase the limited pension by any amount up to the full pension for such period as they choose.

The spouse's limited pension (or increased pension) 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 Annex 10 for more information about Pensions Increase and how it is applied.

Under Rule E8, for the first 13 weeks following a firefighter's death, the spouse's pension is normally increased to a rate which, together with any children's allowances, is not less than the firefighter's weekly rate of pension. This does not apply in the case of a limited award under Rule C8 unless the fire and rescue authority, at their discretion, permit it.

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Example of assessment of civil partner's pension where partners living apart

Example A

A former firefighter dies after retirement. He retired with an ordinary pension of £20,000. His average pensionable pay (APP) was £30,000. 12 years of service were after 5 April 1988. He was living separately from his civil partner at the date of death and was not paying maintenance.

His civil partner will not be entitled to a pension under any other Rules. He will be entitled to a "requisite benefit pension" only (i.e. a minimum level of pension required under contracting-out rules) unless the fire and rescue authority, at their discretion, choose to increase his pension to an amount not exceeding the level of benefits to which he would be entitled had he not been living separately from his partner. The base pension for a partner's pension in this case would be the ordinary pension to which the former firefighter was entitled (before commutation or allocation or Pensions Increase).

Limited pension

Formula: pensionable service after 5.4.1988 $\times \frac{1}{160}$ \times APP

Civil partner's limited pension will be:

$$\begin{aligned} & \text{service from 6.4.1988 to 5.4.2000} \times \frac{1}{160} \times \text{£30,000.00} = 12 \times \frac{1}{160} \times \text{£30,000.00} \\ & = \text{£2,250.00 a year} \end{aligned}$$

Limited pension increased at fire and rescue authority's discretion

Formula: $\frac{1}{2} \times \frac{12}{30}$ \times firefighter's ordinary pension

Civil partner's ordinary pension without limit would be:

$$\begin{aligned} & \frac{1}{2} \times \frac{12}{30} \times \text{£20,000.00} \\ & = \text{£4,000.00 a year} \end{aligned}$$

The fire and rescue authority can increase the limited pension by any amount up to the full pension for such period as they choose.

The civil partner's limited pension (or increased pension) 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 civil 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.

Under Rule E8, for the first 13 weeks following a firefighter's death, the civil partner's pension is normally increased to a rate which, together with any children's allowances, is not less than the firefighter's weekly rate of pension. This does not apply in the case of a limited award under Rule C8 unless the fire and rescue authority, at their discretion, permit it.