Rule B5A offers a means of protecting pension rights against a reduction in pay.

Entitlement to two pensions (a "split" award)

The FPS is a final salary scheme; your pension will normally be based on an average of the pensionable pay you have received over your final year of service. In most cases, pay over the final year is the highest in a firefighters' career. And, as a "safety catch", Rule G1, which sets out how average pensionable pay should be assessed for pension purposes, caters for a reduction in pay which occurs within the last three years of service – if one of the two previous years would produce a higher average pensionable pay than the final year, the higher average can be substituted. Also, the FPS offers protection for the withdrawal of the Long Service Increment as an item of pensionable pay, and additional pension benefits allow for variations in Continual Professional Development payments.

But what would happen if, before your final three years of service, you ceased to be entitled to some other item of pensionable pay, e.g. flexible duty allowance, or had a reduction in pay because of a reduction in role? The position before 1 April 2007 is that you would have paid pension contributions on pay that you would not be able to have taken into account in the assessment of your retirement pension. The introduction of Rule B5A on 1 April 2007 offers a form of protection by splitting your pension entitlement into two parts – one based on service accrued before the pay reduction and one based on service accrued afterwards.

Eligibility for two-pension principle

Rule B5A(1) says that to be eligible for entitlement to two pensions you must be a regular firefighter who has had a reduction in pensionable pay on –

- taking up a different role, or

- becoming entitled to a different rate of pay in your existing role

and consequently the pensionable pay taken into account at normal pension age for the calculation of your pension will be less than it otherwise would have been.

"Role" is explained in B5A(8) as being the role in which you are, for the time being, employed as set out in "Fire and Rescue Services Rolemaps" issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005.

Exclusions

Clearly the two-pension principle will only be helpful to you if the effect of the reduction in pay is still felt at the time you leave the service. You may, for example, have had a withdrawn pensionable allowance restored to you, or have been promoted with an associated increase in pay by the time that you retire. For this reason there is a "get-out" clause. Even if you satisfy the eligibility requirements for the two pensions, Rule B5A(6) says that before leaving their employment, you can give written notice to your fire and rescue authority instructing them to pay you a single award, calculated in accordance with whichever of Rules B1, B2, B3 or B5 would apply in your case.

Rule B5A (continued)

Exclusions (continued)

If you have B5A applied to you, when you are approaching retirement you should ask your pensions administrator to check that it would still give you the greater amount of pension when compared with a single pension under whichever of the other pension rules would otherwise apply, so that you have the necessary information to elect for the single pension if need be, before you leave.

Also excluded from the two-pension protection is the firefighter who opts out of the FPS by making an election under Rule G3. Even if he/she would have previously been eligible for the two-pension principle to be applied, by opting out of the FPS that right is lost. Instead, in accordance with Rule B5A(7), he/she would receive a deferred pension (Rule B5) based on average pensionable pay for the final year of pensionable service (or one of the two previous years if greater).

Method of calculation of two pensions

Rule B5A(2) says that the two pensions are calculated as explained in Rule B5A(3) and (4).

B5A(3) shows the formula for the first pension. This is –

$$A \times \frac{B}{C} \times \frac{D}{60}$$

where

A is your average pensionable pay for the year ending with the last day of pensionable service for which you received the higher rate of pay,

B is the period in years and days of your pensionable service up to that day,

C is your total pensionable service, and

D is the total number of 60ths that would have been used in the calculation if you were entitled to a single pension in respect of total pensionable service, having made an election under Rule B5A(6) that the two-pension principle should not apply.

B5A(4) shows the formula for the second pension. This is –

$$E \times \frac{F}{C} \times \frac{D}{60}$$

where

C and D are as explained above.

E is your average pensionable pay for the year ending with your last day of pensionable service, and

F is the period in years and days of your pensionable service counting from the first day at the lower rate of pay and ending with your last day of pensionable service but, if this – when added to B – would be greater than 30, it is the difference between B and 30.

Rule B5A (continued)

Effect of part-time service

It must be stressed that this Rule does not apply in cases where the reduction in pay simply results from a reduction in hours and the whole-time equivalent pay remains the same. If a firefighter reduces hours but remains on the same grade with the same allowances, pension rights are protected because the pension formulae always require whole-time equivalent pay to be used. Rule B5A is designed to protect cases where there is a reduction in the whole-time pay for a whole-time regular firefighter or in the whole-time equivalent pay for a part-time regular firefighter.

To assess entitlement to, and the amount of, the two pensions for a regular firefighter who has had a period of part-time service, account must be taken of Rule A7(4) (the reckoning of service for the purposes of awards) and to Rule B13 which directs you to look at Schedule 2 Part VIA.

The principle of the formula in Paragraph 2 of Schedule 2 Part V!A is applied to whichever of the two pensions calculated under Rule B5A(3) or (4) is based on a period containing part-time service. If there was a period of part-time service before and after the reduction in pay, then both pensions should be calculated having regard to Schedule 2 Part VIA. See the explanation of Rule B13 given in this Commentary.

Adjustments

The two pensions, may be subject to the following adjustments –

- a reduction for commutation (see the explanation of Rule B7)
- a reduction for allocation (see the explanation of Rule B9)
- a reduction for an election to uprate widow's and children's benefits – generally firefighters with service before 1 April 1972 and so not likely to affect anyone currently serving (see pages B Gen 1)
- a reduction for National Insurance modification – generally firefighters with service before 1 April 1980 (see pages B Gen 2)
- an addition for Pensions Increase (see Annexe 10)
- a reduction in accordance with a pension sharing order issued on divorce, dissolution of civil partnership, or annulment (see Rule B12 and Annexe 14).

It is particularly important to note the addition of Pensions Increase. This is the means by which pensions are "inflation-proofed" (see Annexe 10). Account is taken of a pension's beginning date when the increases are applied. The beginning date is the first day after the end of the averaging period used for working out the average pensionable pay for the pension. So if you have entitlement to two pensions, the first being based on average pensionable pay eight years before you retire, at the time your authority puts the two pensions into payment the first one would have increased in value by reference to all the Pensions Increase Orders that had effect in the previous eight years. (Although the effect of Pensions Increase can be shown in order to compare the value of two pensions with the alternative single pension, the payment of Pensions Increase cannot commence until you attain age 55, unless you retire earlier on health grounds.)

Rule B5A (continued)

Tax

Benefits payable under a pension scheme have to be tested against the "Standard Lifetime Allowance" ("SLA") under tax rules introduced by HM Revenue and Customs ("HMRC") on 6 April 2006. It is the total value of your pension savings, not just those accrued as a member of the FPS, that must be tested against the SLA. The SLA for 2006/07, the first tax year to be covered by the amended rules, was £1,500,000. For 2007/08 it was £1,600,000. Your pensions administrator can advise you of the SLA level in the tax year in which your benefits become payable.

Looking at the limit for 2007/08, if you retired during that tax year, your pensions administrator would ask you to declare any other pension benefits in payment and would compare these, plus the benefits due under the FPS, with the SLA of £1,600,000. If the value of benefits exceeds this amount you would still be eligible to receive the excess but it would be taxed. The tax is called a "lifetime allowance tax charge". There are two different rates of lifetime allowance tax charge. The charge on the excess value taken as a lump sum is 55% and 25% is the charge on any excess value taken as a pension (in addition to any standard Pay As You Earn tax deductions made from instalments of pension). The lifetime allowance tax charge is paid to HMRC by the pension scheme administrator and recovered from the scheme member by a reduction applied to the benefits (as allowed by Rule B11).

To value your FPS benefits the annual pensions are multiplied by 20 and then the lump sum by commutation is added. For example, if you are entitled to pensions totalling £20,000 and choose not to commute,

$$£20,000 \times 20 = £400,000.00$$

If you commuted sufficient to provide a pension of, say £15,000 and lump sum of £75,000, your FPS benefits would be valued as –

$$(£15,000 \times 20) + £75,000 = £375,000.00$$

As you can see this is considerably less than the SLA and so, unless you had a considerable amount of benefits in pension arrangements other than the FPS, your benefits would not be subject to the lifetime allowance tax charge.

If you were a higher earner who claimed Primary Protection or Enhanced Protection when the new tax rules were introduced you should give to your pensions administrator, at the time benefits become due, a copy of any certification supplied by HMRC which confirms the protection.

Payment

Regulation B5A(5) says that the two pensions will become payable on the date from which a pension under Rules B1, B2, B3 or B5 would be paid, had you been entitled to a pension under one of those Rules, according to the circumstances of your retirement, rather than the two pensions under Regulation B5A.

Rule B5A (continued)

Example   Examples of the calculation of the two pensions are given on pages
                    B5A-Example 1.

Useful reference   • FPSC 7/2007: proposal for the introduction of the two-pension principle
source   • FPSC 2/2008: the introduction of Rule B5A

Points To Note

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1. Rule B5A was added to the FPS with effect from 1 April 2007 by The Firefighters' Pension
    Scheme (Amendment) (England) Order 2008. The principle had been included in the NFPS
    on that Scheme's introduction and it was felt that it could be helpful for FPS members too. The
    method of assessment is different, however, because of the "fast accrual" nature of the FPS.

2. In the event of a reduction in pay, as an alternative to taking the two-pension option offered by
    Rule B5A, a firefighter could immediately opt out of the FPS, take a deferred pension under
    Rule B5 based on the pre-reduction average pensionable pay, and join the NFPS or the Local
    Government Pension Scheme (according to the duties of the role held by the firefighter) if
    he/she wished to keep some form of pension cover.

Examples of assessment of two pensions

Example A

A regular firefighter changes role following which his pensionable pay is reduced from £32,000 to £30,000. He becomes entitled to two pensions under Rule B5A. On the day before the reduction in pay he had completed 15 years 220 days of pensionable service. His average pensionable pay at that date was £31,500.75. He goes on to complete a further 14 years 145 days of pensionable service and retires at age 57 in circumstances where an ordinary pension under Rule B1 could be paid, if he so elects, as an alternative to the two pensions under Rule B5A. His average pensionable pay on retirement is £36,500.50. If he elected to receive a single pension, having a total of 30 years' service he would receive a pension based on 40/60ths. Compound Pensions Increase, which has accumulated from the end of the first averaging period when pay reduced, is 17%. The firefighter being age 57, it could be paid immediately with the first pension.

Formula for the first pension of the two-pension provision is:

$$A \times \frac{B}{C} \times \frac{D}{60}$$

where:

A = the firefighter's average pensionable pay for the year ending with his last day of pensionable service at the higher rate of pay

B = the firefighter's pensionable service up to that day

C = total pensionable service

D = the total number of 60ths that would be used if the firefighter were entitled to a single pension in respect of total pensionable service

Formula for the second pension of the two-pension provision is:

$$E \times \frac{F}{C} \times \frac{D}{60}$$

where:

C = total pensionable service

D = the total number of 60ths that would be used if the firefighter were entitled to a single pension in respect of total pensionable service

E = the firefighter's average pensionable pay for the year ending with his last day of pensionable service

F = the firefighter's pensionable service counting from the first day at the lower rate of pay and ending with the last day of pensionable service but, if this – when added to B – would be greater than 30, it is the difference between B and 30

Firefighter's first pension will be:

$$£31,500.75 \times \frac{15\ 220/365}{30} \times \frac{40}{60} \quad = \quad £10,922.18$$

$$£10,922.18 + 17\%\ (\text{Pensions Increase}) \quad = \quad £10,922.18 + £1,856.77$$

$$= \quad £12,778.95 \text{ a year}$$

Firefighter's second pension will be:

$$£36,500.50 \times \frac{14\ 145/365}{30} \times \frac{40}{60}$$

$$= \quad £11,677.94 \text{ a year}$$

B5A – Example 1

Examples of assessment of two pensions (continued)

Example A (continued)

Firefighter's total pensions including Pensions Increase will be:

> £12,778.95 + £11,677.94
>
> =   £24,456.89 a year

Example B

Just before retirement, the firefighter in Example A asks his fire and rescue authority to calculate the pension he would receive if he were to cancel the two pensions payable under Rule B5A in favour of a single, ordinary pension under Rule B1 based on total pensionable service. The single pension would be based on 30 years' pensionable service and average pensionable pay of £36,500.50. Pensions Increase would not apply.

Formula: the (simplified) formula for an ordinary pension is:

$$\frac{\text{service to 20 years}}{60} + \frac{2 \ \times \ \text{service in excess of 20 years}}{60} \ \times \ \text{average pensionable pay}$$

Firefighter's single, ordinary pension would be:

$$\frac{20}{60} + \frac{2 \ \times \ 10}{60} \ \times \ £36,500.50 \quad = \quad \frac{40}{60} \ \times \ £36,500.50$$

> =   £24,333.67 a year

This is less than the combined total of the two pensions shown in Example A. Although average pensionable pay for the final year of service is greater than pensionable pay immediately before the reduction, the effect of Pensions Increase makes the two-pension award a better option. Consequently the firefighter does not give notice under Rule B5A(6) to take a single award.

Note: Pensions as calculated above may be subject to reductions for –
- Commutation – see Rule B7
- Allocation – see Rule B9
- Widow's pension uprating (where service before 1.4.1972) – see pages B Gen 1
- National Insurance modification (where service before 1.4.1980) – see pages B Gen 2
- Pension sharing orders on divorce/dissolution of civil partnership: see Rule B12 and Annexe 14

More examples follow . . .

Examples of assessment of two pensions (continued)

Example C

Assume the firefighter in Examples A and B had served half-time for four of the years in the period of service after the reduction in pay. The starting point for the assessment will be to calculate the two pensions as if he had been whole-time throughout, as shown in Example A, then the second pension is pro-rated to reflect part-time service.

Firefighter's first pension will be £12,778.95 (including Pensions Increase)

Formula for the second pension is:

$$A \times \frac{B + C}{D}$$

where:

A = £11,677.94 (whole-time second pension)

B = 10 years 145 days (whole-time service)

C = 1/2 x 4 = 2 years (part-time service)

D = 14 years 145 days (total service)

Firefighter's second pension will be:

$$£11,677.94 \times \frac{10\ 145/365\ +\ 2}{14\ 145/365}$$

=   £10,055.70 a year

Firefighter's total pensions will be:

£12,778.95 (including Pensions Increase) + £10,055.70

=   £22,834.65 a year (including Pensions Increase)

Note: Pensions as calculated above may be subject to reductions for –
- Commutation – see Rule B7
- Allocation – see Rule B9
- Widow's pension uprating (where service before 1.4.1972) – see pages B Gen 1
- National Insurance modification (where service before 1.4.1980) – see pages B Gen 2
- Pension sharing orders on divorce/dissolution of civil partnership: see Rule B12 and Annexe 14

Another example follows . . .

Examples of assessment of two pensions (continued)

Example D

The firefighter in Example C requests the assessment of a single, ordinary pension. It will be calculated as in Example B then pro rated by the part-time formula shown in Example C.

Formula :

$$A \times \frac{B + C}{D}$$

where:

A = £24,333.67 (whole-time pension)

B = 26 years (whole-time service)

C = 1/2 x 4 = 2 years (part-time service)

D = 30 years (total service)

Firefighter's single, ordinary pension would be:

$$£24,333.67 \times \frac{(26 + 2)}{30}$$

£22,711.43 a year

This is less than the combined total of the two pensions shown in Example C. Consequently the firefighter does not give notice under Rule B5A(6) to take a single award.

If the firefighter had period of part-time service in the period used for the assessment of the first pension rather than the second, the single pension may have proved to be the greater amount.

Note: Pensions as calculated above may be subject to reductions for –
- Commutation – see Rule B7
- Allocation – see Rule B9
- Widow's pension uprating (where service before 1.4.1972) – see pages B Gen 1
- National Insurance modification (where service before 1.4.1980) – see pages B Gen 2
- Pension sharing orders on divorce/dissolution of civil partnership: see Rule B12 and Annexe 14