



# Fire and Rescue Services Act 2004

## 2004 CHAPTER 21

### PART 4

#### EMPLOYMENT

##### *Negotiating bodies*

### 32 Negotiating bodies

- (1) The Secretary of State may by regulations make provision for the establishment of one or more bodies of persons (negotiating bodies) for the purpose of negotiating the conditions of service of employees of fire and rescue authorities.
- (2) Regulations under this section must provide for a negotiating body established by the regulations to be composed of—
  - (a) persons representing the interests of some or all fire and rescue authorities;
  - (b) persons representing the interests of some or all employees of fire and rescue authorities;
  - (c) an independent chairman.
- (3) A chairman is independent for the purposes of subsection (2) if he is not—
  - (a) a member or employee of a fire and rescue authority;
  - (b) a Minister of the Crown;
  - (c) a person employed in the civil service of the State;
  - (d) a member or employee of a body representing the interests of some or all employees of fire and rescue authorities.
- (4) Subsection (5) applies if—
  - (a) a negotiating body is established under this section, and
  - (b) the body includes persons representing the interests of employees of a particular description.

- (5) An agreement as to the conditions of service of employees of that description which is made—
  - (a) by or on behalf of a fire and rescue authority, and
  - (b) by or on behalf of employees of the description concerned,
 is a legally enforceable contract only if its terms were negotiated by means of the negotiating body or in accordance with local negotiation arrangements made by the negotiating body in respect of employees of that description.
- (6) “Local negotiation arrangements” means arrangements made by a negotiating body established under this section for the purpose of enabling conditions of service of employees of fire and rescue authorities to be negotiated at local level.
- (7) Local negotiation arrangements may (in particular) include provision with regard to—
  - (a) the persons or descriptions of persons by whom, or by means of whom, negotiations are authorised to be carried out at local level;
  - (b) the conditions of service and descriptions of conditions of service authorised to be negotiated at local level.
- (8) Local negotiation arrangements may be made by a negotiating body in respect of employees of a particular description only if the negotiating body includes persons representing the interests of employees of that description.
- (9) Before making regulations under this section the Secretary of State must consult any persons he considers appropriate.

### **33 Guidance**

- (1) The Secretary of State may issue guidance to negotiating bodies in connection with the negotiation of the conditions of service of employees of fire and rescue authorities.
- (2) Negotiating bodies must have regard to any guidance issued under this section in negotiating the conditions of service of employees of fire and rescue authorities.
- (3) In this section “negotiating body” means a negotiating body established under section 32 or any other body of persons which—
  - (a) includes both persons representing the interests of some or all fire and rescue authorities and persons representing the interests of some or all employees of fire and rescue authorities, and
  - (b) is constituted in accordance with what appear to the Secretary of State to be appropriate arrangements for the negotiation of the conditions of service of employees of fire and rescue authorities.

### *Pensions etc*

### **34 Pensions etc**

- (1) The Secretary of State may by order bring into operation one or more schemes making provision for the payment of pensions, allowances and gratuities to or in respect of—
  - (a) persons who are or have been employed by a fire and rescue authority or by a Scottish fire authority;
  - (b) persons who die or have died while so employed.

- (2) A scheme brought into operation under this section may in particular—
- (a) provide for the classes of person in respect of whose service awards may be made;
  - (b) provide for treating employment that is not employment by a fire and rescue authority or by a Scottish fire authority as if it were such employment for any purpose of the scheme, to the extent specified in the scheme and subject to any conditions specified in the scheme;
  - (c) provide for the making of contributions by employers and by persons in respect of whose service awards may be made;
  - (d) provide for the repayment of any such contributions or their application for the benefit of persons of a specified description;
  - (e) provide for the making of payments by the Secretary of State, fire and rescue authorities and Scottish fire authorities into a fund to which contributions have been made under the scheme;
  - (f) provide for the making of payments to the Secretary of State out of a fund to which contributions have been made under the scheme;
  - (g) provide for substituting the Secretary of State for a fire and rescue authority or a Scottish fire authority, for any purpose of the scheme;
  - (h) provide for the making to a fire and rescue authority, a Scottish fire authority or the Secretary of State of payments in respect of a person's previous service, including provision for such payments to be made by the Secretary of State;
  - (i) provide for any such payments to be reimbursed out of a fund to which contributions have been made in respect of the previous service to which the payments related;
  - (j) provide for the payment and receipt by fire and rescue authorities or Scottish fire authorities of transfer values or of other lump sum payments made for the purpose of creating or restoring rights to pensions, allowances and gratuities;
  - (k) provide for conditions subject to which an award under the scheme may be made, for the manner in which questions arising under the scheme are to be determined and for appeals from determinations of such questions;
  - (l) provide for excluding or modifying rights to compensation or damages in respect of injuries, in cases where awards are made under the scheme in respect of the injuries;
  - (m) make incidental, supplemental, consequential and transitional provision.
- (3) An order under this section may take effect from a date which is earlier than that on which the order is made.
- (4) An order under this section may vary or revoke a scheme brought into operation by an order under this section.
- (5) Before making, varying or revoking an order under this section the Secretary of State must consult any persons he considers appropriate.
- (6) A person commits an offence if he does an act or makes an omission as a result of which he is injured or becomes ill, for the purpose of obtaining, for himself or another person—
- (a) an award under a scheme brought into operation under this section, or
  - (b) a sum in respect of the repayment or application of contributions made under such a scheme.

- (7) A person guilty of an offence under subsection (6) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum;
    - (ii) in Scotland, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.
- (8) A scheme brought into operation under this section may authorise the forfeiture of the whole or part of an award or sum obtained by a person who has been convicted of an offence under subsection (6).
- (9) In relation to an offence under subsection (6) committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (7) (a) to 12 months is to be read as a reference to 3 months.
- (10) In this section and section 35 “Scottish fire authority” means—
- (a) a fire authority which is a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), or
  - (b) a joint board constituted by virtue of section 36(4)(b) of the Fire Services Act 1947 (c. 41) or section 147(4) of the Local Government (Scotland) Act 1973 (c. 65).

### **35 Information in connection with pensions etc**

- (1) A fire and rescue authority or a Scottish fire authority may in prescribed circumstances—
- (a) provide information in connection with the questions mentioned in subsection (2) to a prescribed person;
  - (b) require a person to whom information is provided under paragraph (a) to pay a reasonable fee in respect of any administrative expenses incurred in providing it.
- (2) These are the questions—
- (a) whether an individual who has opted or transferred out has suffered loss as a result of a contravention which is actionable under section 150 of the Financial Services and Markets Act 2000 (c. 8) (actions for damages in respect of contravention of rules etc.);
  - (b) if so, what payment would need to be made in respect of that individual to the fire and rescue authority or Scottish fire authority concerned to restore the position to what it would have been if the individual had not opted or transferred out.
- (3) Subsection (4) applies if—
- (a) an individual who has opted or transferred out becomes entitled to make contributions to a fire and rescue authority or Scottish fire authority under a scheme brought into operation under section 34, or
  - (b) a payment is made to a fire and rescue authority or Scottish fire authority in respect of such an individual to restore the position to what it would have been if the individual had not opted or transferred out.

- (4) The fire and rescue authority or Scottish fire authority may require a prescribed person to pay a reasonable fee in respect of any administrative expenses incurred in connection with the entitlement or payment.
- (5) An individual is taken to have opted or transferred out for the purposes of this section if—
  - (a) for any period during which he is employed by a fire and rescue authority or Scottish fire authority, he does not make contributions to a scheme brought into operation under section 34 but instead makes contributions to a personal pension scheme, or
  - (b) a transfer value is paid in respect of him to a personal pension scheme by a fire and rescue authority or Scottish fire authority.
- (6) In this section—
  - “personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 (c. 48);
  - “prescribed” means prescribed by regulations made by the Secretary of State for the purposes of this section.

### **36 Preservation of existing pension scheme**

- (1) The Secretary of State may by order provide for the scheme established under section 26 of the Fire Services Act 1947 (c. 41) (Firemen’s Pension Scheme) to continue in force despite the repeal by this Act of that section.
- (2) An order under this section may provide for any enactment amended or repealed by this Act to continue in effect in relation to that scheme unmodified or with any modifications specified in the order.
- (3) An order under this section may in particular make new provision for the name of the scheme.
- (4) This section does not affect any other power in this Act to make transitional or transitory provision.

### *Police*

### **37 Prohibition on employment of police**

No member of a police force may be employed by a fire and rescue authority for the purpose of discharging any of the authority’s functions under this Act.