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STATUTORY INSTRUMENTS

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**1974 No. 540**

**The Fire Services (Compensation) Regulations 1974**

**PART VI**

**ADJUSTMENT, REVIEW AND COMPOUNDING OF COMPENSATION**

**Abatement of compensation by award under the Firemen's Pension Scheme**

**26.**—(1) Where compensation under these Regulations is payable to a person who has lost employment as a regular fireman or to or for the benefit of his widow or child and a pension or allowance under the Firemen's Pension Scheme is also so payable, the annual amount of the compensation shall be abated by the annual amount of the corresponding pension or allowance.

(2) For the purposes of this Regulation in its application to the payment of long-term compensation, where a pension has been reduced under the provisions of the Firemen's Pension Scheme—

- (a) relating to the allocation of a portion of a pension and mentioned in Regulation 18(5), or
- (b) relating to the commutation of a portion of a pension for a lump sum, or
- (c) relating to payments under the Firemen's Pension Scheme for the purpose of qualifying for benefits in respect of previous service or for an improved widow's pension,

the annual amount of that pension shall be deemed to be the annual amount which would have been payable but for the said reduction.

(3) For the purposes of this Regulation no account shall be taken of a pension payable to a widow or child under the Firemen's Pension Scheme by reason of the allocation by the husband or father of a portion of his pension.

**Adjustment of compensation where superannuation benefit is also payable**

**27.**—(1) Where any period of service of which account was taken in calculating the amount of any compensation payable under Part IV or V of these Regulations is subsequently taken into account for the purpose of calculating the amount of any superannuation benefit payable to or in respect of any person in accordance with a pension scheme associated with any employment undertaken subsequent to the loss of employment or diminution of emoluments which was the subject of the claim for compensation, the compensating authority may in accordance with this Regulation withhold or reduce the compensation payable.

(2) If the part of any superannuation benefit which is attributable to a period of service mentioned in paragraph (1) equals or exceeds the part of any compensation which is attributable to the same period, that part of the compensation may be withheld, or if the part of the superannuation benefit is less than the part of the compensation, the compensation may be reduced by an amount not exceeding that part of the superannuation benefit.

(3) In addition to any reduction authorised by paragraph (2), if, in the circumstances mentioned in paragraph (1), compensation is attributable in part to any provision of the Firemen's Pension Scheme for a minimum benefit, the compensation may be reduced by an amount not exceeding that part.

(4) Where any additional period of service has been credited to a person under Regulation 18(2), and that period is equal to or less than the period spent in the subsequent employment mentioned in paragraph (1), the compensation may be reduced (in addition to any other reduction authorised by this Regulation) by an amount not exceeding that attributable to the additional period of service credited or, if the period is greater than the period spent in the subsequent employment, by the proportion of that amount which the period spent in the subsequent employment bears to the additional period so credited.

(5) In making any reduction under paragraphs (2) to (4), the amount of pension to be taken into account relating to the subsequent employment shall be the amount of such pension reduced by a fraction of that pension, where—

- (i) the numerator of the fraction is equivalent to the aggregate of the amount of increases which would have been awarded under the provisions of the Pensions (Increase) Act 1971, during the period beginning with the day following loss of the employment for which compensation is payable and ending on the day the subsequent employment terminated, on an official pension (within the meaning of that Act) of £100 a year which commenced from the first mentioned day, and
- (ii) the denominator of the fraction is equivalent to the aggregate of an official pension of £100 a year and the amount of the increases so determined.

(6) Where compensation has been calculated in accordance with Regulation 23, the provisions of this Regulation shall only apply in relation to the part (if any) of the superannuation benefit which is attributable to annual emoluments in excess of those to which the person was entitled on entering the new employment referred to in Regulation 23.

(7) Where compensation is payable in respect of diminution of emoluments, the provisions of this Regulation shall apply only in relation to the part (if any) of the superannuation benefit which is attributable to annual emoluments in excess of those to which the person was entitled immediately prior to the diminution.

### **Reduction of compensation in certain cases**

**28.**—(1) If under the Firemen's Pension Scheme any benefit payable to a person under the Scheme would have been subject to reduction or suspension on his taking up other specified employment, any retirement compensation to which he is entitled for loss of employment or diminution of emoluments shall, where such an employment is taken up, be reduced or suspended in the like manner and to the like extent.

(2) There shall be deducted from any long-term compensation or retirement compensation payable to any person any contributory payments remaining unpaid at the date when he suffered loss of employment that are not recovered in accordance with the provisions of the Firemen's Pension Scheme.

(3) Where in any week a person entitled to long-term compensation for loss or diminution of emoluments is also entitled to a National Insurance benefit, there shall be deducted from the long-term compensation payable in respect of that week a sum equal to the amount by which the aggregate of—

- (i) the National Insurance benefit that would be payable in respect of that week if calculated at the rate applicable at the date of loss or diminution, and
- (ii) the weekly rate at which the long-term compensation would be payable but for this Regulation, exceeds two thirds of the weekly rate of the emoluments of the employment which he has lost or in which the emoluments have been diminished.

(4) No deduction shall be made under paragraph (3) insofar as—

- (a) an equivalent sum is deducted from the emoluments of his current employment, and

- (b) that deduction from those emoluments has not occasioned an increase in his long-term compensation.
- (a) (5) (a) In paragraph (2) the expression “contributory payments” in relation to any person means any payments which he undertook to make under the Firemen's Pension Scheme for the purpose of qualifying for benefits in respect of previous service or for an improved widow's pension.
- (b) In paragraph (3) the expression “weekly rate” means seven-three hundred and sixty-fifths of the relevant annual rate, and the expression “National Insurance benefit” means any unemployment, sickness, invalidity or injury benefit or retirement pension payable under any enactment relating to National Insurance, other than a benefit climbable by him in respect of a dependant.

### **Notification of change of circumstances**

**29.** Where a person to whom these Regulations apply—

- (a) after suffering loss of employment or diminution of emoluments enters any employment referred to in Regulation 23 or becomes entitled to any superannuation benefit on ceasing to hold such an employment, or
- (b) being entitled to long-term compensation, whilst that compensation is liable to review in accordance with the provisions of Regulation 30, enters any employment, or ceases to hold an employment, or receives any increase in his emoluments in an employment, or
- (c) being entitled to retirement compensation, enters employment in which the compensation is subject to reduction or suspension under Regulation 28 or ceases to hold such an employment, or
- (d) being entitled to long-term compensation, starts to receive any benefit, any increase in benefit or any further benefit, under any enactment relating to National Insurance,

he shall forthwith in writing inform the compensating authority of that fact.

### **Review of awards of long-term or retirement compensation**

**30.—**(1) The compensating authority shall—

- (a) on the expiry of 6 months from the decision date, or
- (b) on the occurrence of any material change in the circumstances of the case,

whichever shall first occur, and thereafter within a period of 2 years after the decision date, or within any longer period specified in the subsequent provisions of this Regulation, and at intervals of not more than 6 months, review its decision or, where the claim has been the subject of an appeal, the decision of the tribunal, and (subject to paragraph (7)) these Regulations shall apply in relation to such a review as they apply in relation to the initial determination of the claim; and on such a review, in the light of any material change in the circumstances of the case, compensation may be awarded, or compensation previously awarded may be increased, reduced or discontinued, subject to the limits set out in these Regulations.

(2) The person to whom the decision relates may require the compensating authority to carry out the review mentioned in paragraph (1) at any time mentioned in that paragraph if he considers that there has been a change in the circumstances of his case which is material for the purposes of these regulations.

(3) The compensating authority shall carry out a review in accordance with paragraph (1), notwithstanding the expiration of the period of 2 years mentioned in that paragraph, if—

- (a) the emoluments of employment or work undertaken as a result of the loss of employment had been taken into account in determining the amount of any compensation awarded, and

- (b) that employment or work has been lost or the emoluments thereof reduced, otherwise than by reason of misconduct or incapacity to perform the duties which the person might reasonably have been required to perform, and
- (c) the compensating authority is satisfied that the loss or reduction is causing him hardship, and where any decision is so reviewed, the decision shall be subject to further review in accordance with paragraph (1) as if the review carried out under this paragraph had been the initial determination of the claim.
- (4) Paragraphs (1) and (2) shall apply in relation to any decision on a claim for long-term or retirement compensation in respect of diminution of emoluments as they apply in relation to any decision mentioned in paragraph (1) and as if in paragraph (1) “decision date” means the date on which any decision on a claim for long-term compensation for diminution of emoluments is notified to the claimant, but—
- (a) where the person to whom the decision relates ceases to hold the employment in which his emoluments were diminished, a review shall be held within 3 months after that date, but no further review shall be held after the expiry of that period, and
- (b) while that person continues to hold that employment, there shall be no limit to the period within which a review may take place.
- (5) Notwithstanding anything contained in the foregoing provisions of this Regulation, the compensating authority shall review a decision, whether of the authority or the tribunal, on a claim for long-term compensation for loss of employment or diminution of emoluments after the expiration of any period within which a review is required to be made if at any time—
- (a) the person to whom the decision relates becomes engaged in any employment (hereinafter referred to as “his current employment”) the emoluments of which are payable out of public funds and which he had undertaken subsequent to the loss or diminution, and
- (b) the aggregate of the emoluments of his current employment, any pension under the Firemen's Pension Scheme and the long-term compensation payable to him exceeds the emoluments of the employment which he has lost or, as the case may be, in which the emoluments have been diminished.
- (6) The compensating authority shall further review any decision reviewed under paragraph (5) whenever the emoluments of the person's current employment are increased.
- (7) If on any review under this Regulation the compensation is reduced it shall not be reduced below the amount by which the emoluments of the work or employment undertaken as a result of the loss of employment or diminution of emoluments, together with any pension under the Firemen's Pension Scheme falls short of the emoluments of the employment which he has lost, or, as the case may be, in which the emoluments have been diminished.
- (8) The compensating authority shall give to a person to whom a decision relates not less than 14 days' notice of any review of that decision to be carried out under this Regulation unless the review is carried out at his request.
- (9) In this Regulation the expression “decision date” means the date on which any decision on a claim for long-term or retirement compensation for loss of employment is notified to a claimant under Regulation 32.
- (10) For the purpose of Regulations 14(4), 23(1) and 27(6) and (7) and any review under this Regulation, no account shall be taken of any increase in the emoluments of any work or employment undertaken as a result of the loss of employment or diminution of emoluments, or of any superannuation benefit attributable to such an increase, if any such increase is effective from any date after the date of the loss or diminution, and is attributable to a rise in the cost of living.
- (11) Nothing in this Regulation shall preclude the making of any adjustment of compensation required by Regulation 27 or 28.

### **Compounding of awards**

**31.—**(1) In the case where an annual sum which has been or might be awarded under these Regulations does not exceed £35, the compensating authority may, at its discretion, compound its liability in respect thereof by paying a lump sum equivalent to the capital value of the annual sum.

(2) In any other case, if the person who has been awarded long-term or retirement compensation requests it to do so, the compensating authority may, after having regard to the state of health of that person and the other circumstances of the case, compound up to one quarter of their liability to make payments under the award (other than payments to a widow, child or other dependant under Regulation 24) by the payment of an equivalent amount as a lump sum.

(3) The making of a composition under paragraph (2) in relation to an award of long-term or retirement compensation shall not prevent the subsequent making of a composition under paragraph (1) in relation to that award but, subject as aforesaid, not more than one composition may be made in relation to any award.