

RULE D5 Child's allowance - limitations

**Rule D5 explains the limits which apply to children's allowances.
Part IV of Schedule 4 gives the adjustment which must apply if a child is in
full-time remunerated training.**

Meaning of "child"

Part I of Schedule 1 defines a child as a legitimate or illegitimate child, step-child or adopted child of a person who dies. It can also mean any other child who was –

- substantially dependent on that person, and either
- related to that person, or
- the child of that person's spouse or civil partner.

Rule D5 sets out the limitations on the above definition.

Limitation in respect of relationship and dependency

Under Rule D5(1), a child will not be eligible for an allowance or a gratuity if he or she –

- was born on or after the date you ceased to be a regular firefighter if not a child of your marriage or civil partnership which took place before that date, or
- is a step-child of your marriage where that marriage took place on or after the date on which you ceased to be a regular firefighter, or
- is a step-child of your civil partnership where that civil partnership took place on or after the date on which you ceased to be a regular firefighter, or
- is a child substantially dependent on you, but not substantially dependent before the date you ceased to be a regular firefighter, or
- is an adopted child, where the adoption took place on or after the date you ceased to be a firefighter, or
- is not a legitimate or adopted child and was not substantially dependent on you at the date of your death.

Allowances: limitation

Eligibility for a child's allowance depends upon age, dependency and education/training.

Ages 16, 17 and 19 are key ages mentioned in Rule D5 – see overleaf.

Also see "Tax" below for limits which apply at age 23 under tax rules.

Rule D5 (continued)

**Allowances:
limitation
(continued)**

Account must also be taken of the level of remuneration of the child if in full-time vocational training – see “Remunerated training limits” below.

Limit at age 16

Under Rule D5(2), if a child has attained the age of 16 (but not 17) and is in full-time employment, no child's allowance will be paid unless the child's employment is full-time vocational training – training for a trade, profession or calling, e.g. an apprenticeship – which will last for at least one year.

Limit at age 17

Under Rule D5(3) and (4), no allowance will be paid to a child who has attained the age of 17 unless he or she –

- is in full-time education or vocational training, or
- is permanently disabled and
 - was permanently disabled and substantially dependent on you at the time of your death, or
 - became permanently disabled while receiving a child's allowance, or
 - the fire and rescue authority, taking account of all the circumstances decide, at their discretion, that an allowance should be paid.

Limit at age 19

Under Rule D5(3) and (5), no allowance will be paid to a child who has attained age 19 unless he or she –

- is in full-time education or vocational training which commenced before the child's 19th birthday, and
 - has continued in this education/training since attaining age 19 without break, or
 - the fire and rescue authority having considered all the circumstances, at their discretion allow the allowance to be paid despite any break in education/training.

**Remunerated
training limits**

Part IV of Schedule 4 explains how a child's allowance must be reduced if the child is in full time remunerated vocational training and has remuneration above a certain limit.

Paragraph 1 applies the limit to –

- an ordinary allowance under Rule D1, and
- an accrued allowance under Rule D4.

However, under paragraph 2, if the firefighter ceased to serve, or died, before 10 October 1983 the limit will not apply until the child reaches age 19.

Rule D5 (continued)

Remunerated training limits (continued)

The limit against which the child's remuneration must be tested is called "the specified rate".

Paragraph 3 explains that the specified rate is the annual rate, rounded up to the nearest £1, at which an official pension would currently be paid if it began on 1 June 1972 at £250 a year and qualified for all increases due since then under Pensions Increase Acts and Orders.

The child's remuneration must be compared with the specified rate. Then, in accordance with paragraph 2(2) –

- if the remuneration is less, the child will receive his/her allowance in full
- if the remuneration is more, the child must have his/her allowance reduced by the difference between the remuneration and the specified rate
- if the difference between the remuneration and the specified rate is greater than the value of the allowance, the child will not receive any allowance.

If a child in remunerated vocational training –

- has his/her allowance reduced or cancelled because of the level of remuneration and is –
 - one of 3 or more children entitled to an ordinary allowance under Rule D1, or
 - one of 5 or more children entitled to a special allowance under Rule D2

the remaining children would have the element of reduction or the value of the cancelled allowance apportioned between them under paragraph 2(2). Under paragraph 3, however, any apportionment must not cause an individual allowance, or total of allowances, to exceed the normal permitted percentage.

Where more than one child of the family has to have their allowance reduced or extinguished, they cannot gain from the above re-apportionment.

Tax

The tax regime for pension schemes introduced on 6 April 2006 requires payment of a child's pension to cease when the child attains age 23, even if that child is in full-time education. The exception would be if the child has reached that age but was dependent, because of physical or mental impairment, on the pension scheme member at the date of the member's death.

There is also transitional protection offered by Article 34 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 [SI 2006/572]. If –

- a child's pension was in payment on 5 April 2006
- the scheme member's pension was in payment on 5 April 2006 and the child is born on or before 5 April 2007

the child's pension can continue until the child ceases full-time education or vocational training even if this is after the child attains age 23.

Rule D5 (continued)

Archived pages Before 1 April 2006, Rule D2 made provision for a child's special allowance and Rule D3 made provision for a child's special gratuity. These benefits would possibly be payable if a firefighter died as a result of a qualifying injury. With effect from 1 April 2006 these provisions were transferred to the Firefighters' Compensation Scheme. Rule D5 applied limits to these benefits. In case reference needs to be made to the effect of Rule D5 on benefits paid under Rules D2 and D3 before 1 April 2006, the previous explanation follows these pages as "archived" material.

Useful reference source

- FSC 16/1983: explains amendments to age limits and terms of dependency introduced into the FPS at that time
- FSC 8/1984: offers guidance to fire authorities regarding payment of child's allowance during school holidays to those who have attained age 17 but not commenced employment (to reflect application of Social Security Benefit rules).

Points To Note

1. A table showing the relevant ages and circumstances of eligibility for children's awards is given at page D5-Chart 1.
2. Where a child's allowance is liable to be reduced or extinguished under paragraph 2 of Part IV of Schedule 4 (because the child is in vocational training and is being paid more than the specified rate) this reduction or extinction will not apply until the end of the 13-week period, if the child is entitled to an increased allowance under Rule E8(5).
3. "Substantially dependent" is not defined in the FPS. A fire and rescue authority will need to be satisfied on this point, where the payment of an award depends upon it.
4. If there is a disagreement which cannot be resolved, about whether a child was sufficiently dependent at a particular time (and therefore whether an award is payable), an appeal may be made to the courts under Rule H3.
5. An illegitimate child born **after** you leave the fire and rescue service cannot qualify for a child's award, because the child will not be a child of your marriage or civil partnership (and there could be no question of substantial dependency when you ceased to serve, for a child not then born).
6. A natural child who is adopted ceases to be the child of his or her natural parents and so is not entitled to payment of allowances in respect of the natural person's service **unless** the allowance is already in payment at the time of adoption.
7. The expression "full-time education" is not defined but no problem should arise while a child is under 17 or while undertaking a course of further education if over 17. However, where a child who is age 17 or over has left school but not begun employment, an allowance may continue to be paid until the start of the following school term, provided the child does not start permanent employment. (In other words, "full-time education" may be regarded as continuing through the final school holidays.)

Rule D5 (continued)

Points To Note continued

8. "Full-time vocational training" means full-time training of at least 1 year's duration for a trade, profession or calling. The distinction between training and employment may often be blurred.
9. A child over the age of 19 would have to be continuously in full-time education or training since before his or her 19th birthday, to qualify for a children's allowance on these grounds, but could switch between education and training if continuity were not broken.
10. "Disablement" in the case of a child, means being unable to earn a living because of physical or mental infirmity – see the definition in the explanation of Rule A10.
11. A child is "permanently disabled" if, at the time in question, his or her disablement is considered likely to be permanent. If the child's condition changes, the entitlement may change.
12. Children's allowances and gratuities are not intended for those who have become financially independent and then become disabled at some later date. That is why, if a child is permanently disabled, Rule D5(4) ensures that a child's allowance or gratuity will be payable only if –
 - a child is substantially dependent on you, and already disabled, when you die, or
 - the child becomes disabled while receiving a child's allowance (the allowance being regarded as effectively continuing the child's dependence); however, unless covered by Transitional Provisions (see "Tax"), the allowance must cease at age 23 in these circumstances.
13. What is meant by a child's "remuneration" (when in vocational training) is not defined. The fire and rescue authority will need to be informed of the amount of a child's annual pay while training and if the amount changes.
14. If the circumstances of a child in vocational training change, the position will need to be reviewed and the provisions of the scheme applied to the new circumstances, e.g. –
 - if remuneration increases or falls, or
 - if the "specified rate" changes because a new Pensions Increase (Review) Order comes into force.
15. There can be no question of some children of a relevant parent being orphans but not others. For example, although a male firefighter's first wife may have died, his second wife will be the step-mother of the children of this first marriage. While she is alive she will be the "surviving parent" of all the firefighter's children, because of the definition of "child" in Schedule 1 Part I. The same situation would apply to the husband of a female firefighter and in the case of civil partners.

RULE D5
Child's allowance - limitations

Summary of age and eligibility for children's awards

AGE* OF CHILD	CHILD'S ALLOWANCE
Under 16	Payable in all cases.
16 to under 17	Payable in all cases except where in full-time employment unless this is full-time vocational training of at least one year's duration.
17 to under 19	Payable only where: (a) in full-time education or full-time vocational training, or (b) permanently disabled, and – - substantially dependent on the firefighter at date of death, or - became permanently disabled while receiving allowance, or - fire and rescue authority exercise their discretion to allow payment.
19 to the attainment of age 23	Payable as for 17 to under 19 age group except, if education or vocational training has not been continuous since before age 19, any entitlement under (a) is at the discretion of the fire and rescue authority.
Age 23 or over	Payable only if permanently disabled at the date of the firefighter's death or if covered by Article 23 of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 [SI 2006//572]

* This means the age at or after the date of the firefighter's death

RULE D5 ARCHIVED
Child's allowance or special gratuity - limitations

Rule D5 Extract

**Gratuities:
limitation**

Rule D5(7) prevents the payment of a special gratuity under Rule D3 to a child who had attained age 17 before the date of your death, unless he or she was -

- in full-time education or undergoing full-time vocational training, or
- both permanently disabled and substantially dependent on you at the date of your death.

**Remunerated
training limits**

Part IV of Schedule 4 explains how a child's allowance must be reduced if the child is in full time remunerated vocational training and has remuneration above a certain limit.

Paragraph 1 applies the limit to –

- an ordinary allowance under Rule D1
- a special allowance under Rule D2, and
- an accrued allowance under Rule D4.

However, under paragraph 2, if the firefighter ceased to serve, or died, before 10 October 1983 the limit will not apply until the child reaches age 19.

RULE D5 ARCHIVED
Child's allowance or special gratuity - limitations

Rule D5 Extract
Summary of age and eligibility for children's awards

AGE* OF CHILD	CHILD'S ALLOWANCE	CHILD'S SPECIAL GRATUITY
Under 16	Payable in all cases.	Payable in all cases.
16 to under 17	Payable in all cases except where in full-time employment unless this is full-time vocational training of at least one year's duration.	Payable in all cases.
17 to under 19	Payable only where: (a) in full-time education or full-time vocational training, or (b) permanently disabled, and – - substantially dependent on the firefighter at date of death, or - became permanently disabled while receiving allowance, or - fire and rescue authority exercise their discretion to allow payment.	Payable only where: (a) in full-time education or full-time vocational training, or (b) both permanently disabled and substantially dependent on the firefighter.
19 or over	Payable as for 17 to under 19 age group except, if education or vocational training has not been continuous since before age 19, any entitlement under (a) is at the discretion of the fire and rescue authority.	Payable as for 17 to under 19 age group.

* In the case of an allowance, this means the age at or after the date of the firefighter's death; in the case of a special gratuity, this means the age before the date of the firefighter's death.