

RULE E2

Adult dependent relative's special pension

Rule E2 and Part I of Schedule 5 give details of a discretionary award which can be made to an adult dependant relative of a firefighter or former firefighter who dies from the effects of a qualifying injury.

This Rule was removed from the FPS with effect from 1 April 2006 when the Firefighters' Compensation Scheme was introduced.

The explanation of Rule E2 as it applied up to 31 March 2006 appears on the following pages as "archived" material.

RULE E2 ARCHIVED

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Rule E2 and Part I of Schedule 5 give details of a discretionary award which can be made to an adult dependant relative of a firefighter or former firefighter who dies from the effects of a qualifying injury.

Eligibility for a dependent relative's special pension

Rule E2(1) applies this Rule where a person who is or has been a regular firefighter dies from the effects –

- of a qualifying injury*, or
- of infirmity of mind or body occasioned by a qualifying injury*.

and where there is an adult dependent relative.

*Rules A9 and A11 define “qualifying injury” in this context.

Rule E2(2) explains that an adult dependent relative can be any of the following relatives of the firefighter or former firefighter who were substantially dependent on him or her at the time of death –

- a parent
- a brother or sister who has attained age 19 before the date of death
- a child of the firefighter who has attained age 19, either before or after the date of death.

The award of a dependent relative's special pension is totally at the discretion of the fire and rescue authority. If, considering all the circumstances of the case, the fire and rescue authority decide that payment of an award would be appropriate, Rule E2(3) enables this to be done.

Method of calculation of a dependent relative's special pension

Rule E2(4)(a) refers to Part I of Schedule 5 for the method of calculation.

Subject to the limits given below, the amount of pension will be –

- 20% of the deceased's average pensionable pay if there is a surviving spouse or civil partner
- 45% of the deceased's average pensionable pay if not.

The limits are set out in paragraph 2, Part I of Schedule 5. They require that, in any week, the total of adult dependent relative's special pension when added to any spouse's or civil partner's special pension and child's special allowances should not exceed the deceased's weekly average pensionable pay. (Rule G1(8) defines a firefighter's average pensionable pay for a week as his/her average pensionable pay divided by 52 1/6th.)

This means that if the surviving spouse's or civil partner's and child's special pensions are such that they already exceed the average pensionable pay, no adult dependent relative's award can be paid. If they do not exceed the average pensionable pay, only the difference between these awards and the pensionable pay can be paid as a dependent relative's allowance (even if this is less than the 20% or 45% otherwise payable).

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Rule E2 (continued)

Method of calculation of a dependent relative's special pension (continued)

When testing the level of awards against average pensionable pay, any Pensions Increase on the pensions and allowances should be ignored.

Effect of part-time service

If the firefighter had a period of part-time service, Schedule 5 Part I, paragraph 3 requires that the average pensionable pay shall be calculated using the formula in Part 2 Schedule VIA. The pages of the Commentary which cover Rule B13 explain this Part of Schedule 2.

This pro rated average pensionable pay would be used both for calculating the pension and for testing it against the limits given in Schedule 5 Part I.

Payment

Under Rule E2(4), the adult dependent relative's special pension is payable for such periods as the fire and rescue authority may from time to time determine. They may stop paying it or resume paying as they think fit.

Other terms of payment are given in Rules L3 and L5.

Example

Examples of the calculation of an adult dependent relative's special pension are given on page E2-Example 1.

Useful reference source

- 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. This Rule may apply even if you leave the fire and rescue service for some other reason and later die as a result of a qualifying injury.
2. "Substantially dependent" is not defined. It is for your fire and rescue authority to decide whether in their view there is substantial dependency, but even if they decide there is, it is still within their discretion to refuse an award, having regard to all the circumstances of the case. As this award is expressly declared to be within a fire and rescue authority's discretion, there is no right of appeal against a decision not to pay it. Rule H3(3) states that the Crown Court (Sheriff Court in Scotland) cannot overrule a fire and rescue authority's exercise of discretionary powers.
3. "Child" has the meaning given in Schedule 1 (see page A2-Chart 1). If the fire and rescue authority were to grant a pension under this Rule to a child entitled to a special allowance under Rule D2, only the higher of the 2 awards would be payable because of Rule L4(3) – "Prevention of duplication".

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Rule E2 (continued)

Points To Note continued

4. It is possible for more than one adult dependent relative's special pension to be paid. The basic amount would be 45% or 20% of the firefighter's average pensionable pay, depending on the circumstances of each. If the basic amount had to be reduced it would be for your fire and rescue authority to decide whether or not to reduce the pensions equally.
5. An adult dependent relative's special pension could start at 20% of average pensionable pay for a week and be increased to 45% following the death of a widow(er) or civil partner.
6. If the only award payable following the death of a firefighter is an adult dependent relative's special pension, this would not be increased under Rule E8. Care must be taken if a spouse's or civil partner's pension or a children's allowance is paid which is increased under Rule E8. Because the payment of an adult dependent relative's special pension must not make total payments greater than the firefighter's average pensionable pay, it may not be possible to pay this special pension during the first 13 weeks.
7. No account is taken in this award of any pension sharing order issued by a court on divorce, dissolution of civil partnership or annulment. This is because this pension and any spouse's, civil partner's and children's pensions which must be taken into account are all based on the firefighter's pay, not his/her pension entitlement.
8. Pension provisions for part-time regular firefighters were introduced on 13 September 2004.
9. Dependant's benefit provisions were introduced for civil partners on 5 December 2005 by legislation made under the Civil Partnership Act 2004. They are based on service after 5 April 1988 only.

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Example of assessment of adult dependent relative's special pension

Example A

A firefighter dies in service as a result of a qualifying injury. She does not leave a widower or children, but does have a disabled widowed mother who was substantially dependent upon her. At the date of death her average pensionable pay (APP) was £32,000.

The fire and rescue authority consider all the circumstances of the case and decide that the firefighter's mother should receive an adult dependent relative's pension. Because there is no surviving spouse, the adult dependent relative's special pension will be 45% of APP.

Formula: $45\% \times \text{APP}$

Adult dependent relative's special pension will be:

$$\begin{aligned} &45\% \times \text{£}32,000.00 \\ &= \text{£}14,400.00 \text{ a year} \end{aligned}$$

Example B

A firefighter dies in service from the effects of a qualifying injury, leaving a widow and 4 children. Since the death of his parents he had been looking after and financially supporting his disabled younger brother aged 27. At the date of death his average pensionable pay (APP) was £17,400.

The fire and rescue authority used their discretionary powers to award an adult dependent relative's special pension to the firefighter's brother. Normally where there is a surviving spouse, the dependent relative's special pension is 20% of APP. However, his widow will be entitled to a spouse's special pension of 45% of APP and each of his 4 children are entitled to children's special allowances of 10%, a total of 85% of APP. Because total payments must not exceed 100% of APP, the disabled brother will be limited to an award of 100% less 85%, i.e. 15% of APP until any of the children ceases to be eligible for a child's allowance, at which time the adult dependent relative's special pension will be reassessed.

Formula: Lesser of –

$$\begin{aligned} &20\% \times \text{APP}, \text{ or} \\ &100\% \times \text{APP} - [\text{spouse's pension plus total of children's allowances}] \end{aligned}$$

Adult dependent relative's special pension will be lesser of:

$$\begin{aligned} &20\% \times \text{£}17,400.00 = \text{£}3,480.00 \text{ a year, or} \\ &\text{£}17,400.00 - [(45\% \times \text{£}17,400.00) + (4 \times 10\% \times \text{£}17,400.00)] = \text{£}17,400.00 - \text{£}14,790.00 \\ &= \text{£}2,610.00 \text{ a year.} \end{aligned}$$

therefore adult dependent relative's special pension will be £2,610.00 a year.

When the number of eligible children reduces to 3, the adult dependent relative's award will be the lesser of :

$$\begin{aligned} &20\% \times \text{£}17,400.00 = \text{£}3,480.00 \text{ a year, or} \\ &\text{£}17,400.00 - [(45\% \times \text{£}17,400.00) + (3 \times 10\% \times \text{£}17,400.00)] = \text{£}17,400.00 - \text{£}13,050.00 \\ &= \text{£}4,350.00 \text{ a year} \end{aligned}$$

therefore adult dependent relative's special pension will be £3,480.00 a year.

The adult dependent relative's special 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 adult dependent relative's special pension will continue to be increased in this way each year for so long as it remains in payment at the fire and rescue authority's discretion. See Annexe 10 for more information about Pensions Increase and how it is applied.

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Example of assessment of adult dependent relative's special pension (continued)

Example C

Assume the firefighter in Example A had served 24 years, 12 at whole-time and 12 at part-time (half-time). Her average pensionable pay at date of death was £16,000; if whole-time it would have been £32,000.

The fire and rescue authority consider all the circumstances of the case and decide that the firefighter's mother should receive an adult dependent relative's pension. Because there is no surviving spouse or civil partner, the adult dependent relative's special pension will be 45% of APP.

Formula: In order to assess the adult dependent relative's pension, an average pensionable pay figure must be calculated on the formula contained in Schedule 2 Part VIA:

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

A = the average pensionable pay the firefighter would have received if whole-time, i.e. £32,000

B = 12

C = 6

D = 24

$$\frac{£32,000 \times (12 + 6)}{24}$$

$$= £24,000$$

Adult dependent relative's special pension will be:

$$45\% \times £ 24,000 = £10,800 \text{ a year}$$

The adult dependent relative's special 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 adult dependent relative's special pension will continue to be increased in this way each year for so long as it remains in payment at the fire and rescue authority's discretion. See Annexe 10 for more information about Pensions Increase and how it is applied.