

RULE G1

Pensionable pay and average pensionable pay

Rule G1 gives the meaning of pensionable pay and explains how average pensionable pay is assessed.

- Pensionable pay** "Pensionable pay" is the pay
- on which you pay pension contributions,
 - which is used directly for calculating certain benefits
 - which is used in the assessment of average pensionable pay for calculating other benefits

The basic definition is given in Rule G1(1). This states that in the case of a regular firefighter, pensionable pay is the amount determined in relation to the performance of the duties of your role whether as a whole-time or part-time employee. This includes continual professional development ("CPD") payments although the benefits derived from CPD payments are not calculated in the same way as the "main" FPS benefits – see "CPD payments" below.

(The pensionable pay for a part-time regular firefighter is the pay, as a proportion of whole-time, determined in relation to the firefighter's role.)

- Tax limits** HM Revenue and Customs ("HMRC") have rules about what can and can't be considered pensionable pay. Rule G1(2) contains a reference to the "earnings cap". This is a limit on the level of pay that can be treated as pensionable. It applies to anyone who first becomes liable to pay pension contributions after 31 May 1989. It would also apply to someone who may have paid contributions before that date but who subsequently had a break in continuity of pensionable service which removes a protected right not to have the cap applied.

The earnings cap has been increased each year in line with rises in the retail price index. When first introduced in 1989, it was £60,000. By tax year 2005/2006 it had reached £105,600.

Those who are affected will pay contributions on pay up to the level of the cap. Anything above the cap does not count as pensionable pay and so -

- contributions would not be paid on the excess,
- anything over the cap would not be taken into account when calculating benefits based on pensionable pay,
- anything over the cap would not be taken into account when calculating benefits based on average pensionable pay.

A new tax regime for pension schemes introduced by HMRC on 6 April 2006 removed the requirement for a pension scheme to have this earnings limit, but a number of schemes, including the FPS, retained it.

Pensionable pay and average pensionable pay**Rule G1 (continued)****Maternity,
paternity,
adoption leave**

Rule G1(2A) explains that during a period of maternity, paternity or adoption leave, basic pension contributions under Rule G2 are not assessed on pay in relation to your rank or post as otherwise required under Rule G1 but on the pay to which you are entitled for that period including any statutory maternity, paternity or adoption pay under the Social Security Contributions and Benefits Act.

Although pay during this period may be lower than your pensionable pay as defined by Rule G1(1), for benefit purposes your "full" pensionable pay as defined in Rule G1(1) would be taken into account.

**Average
pensionable pay**

Some benefits, e.g. the lump sum death grant, are based on pensionable pay. Most benefits, however, are based on "average pensionable pay".

Rule G1(3) defines average pensionable pay (subject to certain other provisions in Rule G1) as the aggregate of your pensionable pay for the year ending with the "relevant date".

In the case of Rule C7 (award to spouse or civil partner where no other award payable) Rule G1(4)(a) sets the relevant date as the date of the person's last day of service as a regular firefighter. For other benefits which are based on membership of the FPS, Rule G1(4)(b) says that the relevant date is the last day of service in a period during which pension contributions were payable under Rule G2. This will normally be the last day of service as a firefighter or the date immediately before the date at which an election under Rule G3 (not to pay contributions and therefore to leave the FPS) takes effect.

The year looked at for purposes of determining average pensionable pay is often described as the "averaging period".

If one of the two years before the final year would produce a higher figure than the last year, Rule G1(7) will allow that earlier year's average pensionable pay to be substituted. The previous years must always be those with dates which correspond with the final year. For example, if you left on 31 August 2005, it would be the average derived from pensionable pay for the year 1 September 2004 to 31 August 2005 that would first have been looked at. This would then be compared with the average derived from pensionable pay for the years 1 September 2003 to 31 August 2004, and 1 September 2002 to 31 August 2003.

Whichever year yields the highest average pensionable pay would be the selected averaging period and the average pensionable pay from that period would be used in the assessment of benefits.

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Rule G1 (continued)

Average pensionable pay (continued)

The pensionable pay you receive may occasionally suffer a temporary reduction. Rule G1(6) allows certain temporary reductions in pensionable pay to be disregarded. These are reductions as a result of any -

- sick leave
- stoppage by way of punishment
- ordinary maternity, ordinary adoption or paternity leave
- paid additional maternity or additional adoption leave
- unpaid additional maternity or additional adoption leave where contributions have been paid under Rule G2A.

What if you have not been a member of the FPS for a whole year or if the averaging period contains a period of unpaid absence which cannot be disregarded under Rule G1(6)? Rule G1(5) instructs that in such cases your average pensionable pay would be the aggregate of your pensionable pay for the period "multiplied by the reciprocal of the fraction of the year which that part represents". In other words, if you received pensionable pay for only 320 days of a 365-day year, the pay received during that year would be averaged and then multiplied by 365/320.

If it becomes necessary to work out the average pensionable pay for a week, Rule G1(8) says that this will be the average pensionable pay (i.e. as assessed for a year) divided by 52 1/6th.

Although CPD payments are treated as pensionable pay, because Rule B5C provides an additional pension benefit ("APB") based on CPD payments, they should not be taken into account in the assessment of average pensionable pay.

Effect of part-time service

Rule G1(1) specifies that it is the pay received "whether as a whole-time or part-time employee" that is treated as pensionable. This means that a part-time regular firefighter pays contributions on part-time, not whole-time, pay.

As regards benefits, if a firefighter has had a period of part-time service, the principles of assessment usually require account to be taken of the formula in Part VIA of Schedule 2. That formula applies pro-rating (to reflect part-time service) of a benefit calculated as if "the average pensionable pay was the pay the person would have received had he been a whole-time employee of a fire and rescue authority".

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Rule G1 (continued)

Protection of Long Service Increment

Firefighters with 15 years' continuous service used to receive an increment to their pay known as Long Service increment ("LSI") and this was pensionable. As part of the 2003 pay settlement, the NJC agreed that LSI should be phased out. It was frozen at £990 per annum from 7 November 2003, and was reduced to £495 from 1 October 2006 although transitional payments continued until 30 June 2007 when payments ceased.

The phasing out of LSI meant that firefighter members who had been in receipt of the increment would have paid contributions on something which would not feature in their final year's pay. And those who retired shortly after the phasing out of LSI would have it included in their average pensionable pay but at a lower rate than if LSI had continued.

Ministers recognised this and agreed that arrangements should be made to allow compensatory adjustments to the average pensionable pay used in the assessment of benefits, or to provide an Additional Pension Benefit ("APB") based on the LSI. Consequently, the Firefighters' Pension Scheme (Amendment) (England) Order 2008 amended Rule G1 to provide for a compensatory adjustment to average pensionable pay and added Rule B5B to provide LSI APBs. The amendments have effect from 1 July 2007.

Firstly, then, there is special treatment for a firefighter who was entitled to LSI and who after 30 September 2006 and before 1 October 2007 retires with a pension or becomes entitled to a deferred pension (by leaving before any other pension is payable or by opting out of the FPS). Rule G1(7A) allows the average pensionable pay to be calculated as if LSI had accrued at the rate of £990 a year, disregarding any reduction to the LSI as it was phased out. The condition is that actual LSI payments made must not be taken into account.

Secondly there is protection for a firefighter who was entitled to LSI and who retires on or after 1 October 2007. Rule G1(7B) combines with Rule B5B to offer protection. Rule B5B allows an additional pension benefit ("APB") based on LSI to be calculated and paid with the main benefit due under the FPS. Rule G1(7B) says that firefighter's entitlement will be to whichever of the following would give him/her the greater amount –

- an LSI APB plus main FPS benefits based on average pensionable pay which does not include any LSI payments, or
- no LSI APB, but main FPS benefits based on average pensionable pay which does include any LSI payments.

A summary of the action required (and options available) immediately after the addition of Rule B5B to the FPS, is given on page B5B – Chart 1.

Examples

Examples of the assessment of average pensionable pay are given on pages G1-Example 1.

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Rule G1 (continued)

- Useful reference source**
- FSC 8/1989: introduction of "earnings cap"
 - FSC 30/2004: introduction of pension provisions for part-time regular firefighters
 - Kent & Medway Towns Fire Authority and (i) Pensions Ombudsman (ii) Hopper: payments in lieu of annual leave are not pensionable within the meaning of the Scheme.
 - FPSC 4/2005: pensionable pay and salary sacrifice
 - FPSC 7/2007: proposals for the introduction of protection of LSI and for CPD APBs
 - FPSC 2/2008 and FPSC 2/2008 (amended): introduction of protection of LSI, LSI APBs and the two-pension principle.

Points To Note

1. If the averaging period used for assessing average pensionable pay contains 29 February, the assessment will be based on 366 days.
2. The date from which Pensions Increase is assessed is the day following the last day of the averaging period. This means that if, instead of the final year, one of the two previous years produces the highest level of average pensionable pay, there would be the additional benefit of a higher level of Pensions Increase. (The test of which of the last 3 years produces the highest amount is based on pensionable pay only; Pensions Increase cannot be taken into account for this purpose.)
3. Pension provisions for part-time regular firefighters were introduced from 13 September 2004.
4. Salary sacrifice schemes are permitted by HM Revenue and Customs and allow an employer to offer an employee certain benefits, e.g. childcare, in return for giving up part of their salary. For the employee there are savings of National Insurance contributions and income tax. As a consequence of the establishment of such schemes, pensionable pay of a regular firefighter should be taken to be the amount determined in relation to the performance of the duties of the role, rather than the pay received. An amendment made to Rule G1(1) by the Firefighters' Pension Scheme (Amendment) (England) Order 2005 ensures that authorities which have introduced salary sacrifice schemes can collect pension contributions based on the amount of pay before the reduction for the sacrifice and thus preserve full pensionable benefits.
5. Injury provisions were moved from the FPS to the Firefighters' Compensation Scheme with effect from 1 April 2006. However, for injury awards made before that date under the FPS, Rule G1(4)(a) defined the "relevant date" as the last day of service as a regular firefighter. These awards are -
 - an injury award (Rule B4)
 - a spouse's or civil partner's special award (Rule C2)
 - a child's special allowance (Rule D2)
 - a child's special gratuity (Rule D3)
 - an adult dependent relative's special pension (Rule E2).

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Rule G1 (continued)

Points To Note continued

6. Protection in the case of a permanent reduction in pay became possible with effect from 1 April 2007 when Rule B5A (entitlement to two pensions) was added to the FPS. This allows your pension entitlement to be divided into two parts – one based on service accrued before the pay reduction and one based on service accrued afterwards. The first pension would, therefore, be based on average pensionable pay immediately before the reduction.

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Examples of assessment of average pensionable pay

The rates of pay used are for example purposes only. They do not pretend to reflect "real" pay rates.

Example A

A firefighter's last day of service is 30 June 2005. The pensionable pay received during his last year of service is higher than in either of the two previous years and he has had no periods of unpaid absence. There is no need to compare the final year's average pensionable pay (APP) with the two previous years. His APP is assessed as follows.

PENSIONABLE PAY DURING AVERAGING PERIOD

01.07.04	to 31.07.04	£22,000.00	(pay for rank)
01.08.04	to 31.08.04	£24,000.00	(pay for rank on temporary promotion)
01.09.04	to 06.11.04	£22,000.00	(pay for rank)
07.11.04	to 31.01.05	£23,000.00	(pay for rank following pay award)
01.02.05	to 30.06.05	£25,000.00	(pay following promotion)

AVERAGE PENSIONABLE PAY

01.07.04	to 31.07.04	£22,000.00	x	031/365	=	£ 1,868.49
01.08.04	to 31.08.04	£24,000.00	x	031/365	=	£ 2,038.36
01.09.04	to 06.11.04	£22,000.00	x	067/365	=	£ 4,038.36
07.11.04	to 31.01.05	£23,000.00	x	086/365	=	£ 5,419.18
01.02.05	to 30.06.05	£25,000.00	x	<u>150/365</u>	=	<u>£10,273.97</u>
TOTAL				<u>365/365</u>	=	<u>£23,638.36</u>

Example B

If similar levels of pay had applied a year earlier and a firefighter left on 30 June 2004, the averaging period would include 29 February 2004. The assessment of APP would be as follows. The slight increase in APP in this case reflects the fact that the 29 February fell within the highest earning period

PENSIONABLE PAY DURING AVERAGING PERIOD

01.07.03	to 31.07.03	£22,000.00	(pay for rank)
01.08.03	to 31.08.03	£24,000.00	(pay for rank on temporary promotion)
01.09.03	to 06.11.03	£22,000.00	(pay for rank)
07.11.03	to 31.01.04	£23,000.00	(pay for rank following pay award)
01.02.04	to 30.06.04	£25,000.00	(pay following promotion)

AVERAGE PENSIONABLE PAY

01.07.03	to 31.07.03	£22,000.00	x	031/366	=	£ 1,863.39
01.08.03	to 31.08.04	£24,000.00	x	031/366	=	£ 2,032.79
01.09.03	to 06.11.03	£22,000.00	x	067/366	=	£ 4,027.32
07.11.03	to 31.01.04	£23,000.00	x	086/366	=	£ 5,404.37
01.02.04	to 30.06.04	£25,000.00	x	<u>151/366</u>	=	<u>£10,314.21</u>
TOTAL				<u>366/366</u>	=	<u>£23,642.08</u>

More examples follow . . .

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Examples of assessment of average pensionable pay (continued)

Example C

The firefighter in Example A had a period of unpaid absence from 1 May 2005 to 10 May 2005 inclusive. The assessment of average pensionable pay would be as follows.

AVERAGE PENSIONABLE PAY						
01.07.04	to	31.07.04	£22,000.00	x	031/365	= £ 1,868.49
01.08.04	to	31.08.04	£24,000.00	x	031/365	= £ 2,038.36
01.09.04	to	06.11.04	£22,000.00	x	067/365	= £ 4,038.36
07.11.04	to	31.01.05	£23,000.00	x	086/365	= £ 5,419.18
01.02.05	to	30.04.05	£25,000.00	x	089/365	= £ 6,095.89
01.05.05	to	10.05.05	unpaid absence	x		
11.05.05	to	30.06.05	£25,000.00	x	<u>051/365</u>	= <u>£ 3,493.15</u>
TOTAL					<u>355/365</u>	= <u>£22,953.43</u>

The total of pay received during the averaging period (£22,953.43) is divided by the number of days for which the pay was received (355) and multiplied by the number of days in the averaging period (365).

$$\text{Average pensionable pay} = £22,953.43 \times 365/355 = £23,600.01$$

Example D

The firefighter retired on health grounds with a last day of service of 12 January 2004. His average pensionable pay (APP) assessed for his last three years of service produced the following figures:

13.1.2003 to 12.1.2004: £40,000.00
 13.1.2002 to 12.1.2003: £42,000.00:
 13.1.2001 to 12.1.2002: £38,000.00

Consequently the APP for the penultimate year (£42,000.00) was used in the calculation of benefits. After commutation, the pension based on this APP was £14,175.00, the lump sum was £70,875.00.

The benefits are put into payment on 13 January 2004 but because the averaging period used for APP ends on 12 January 2003, the "beginning date" for Pensions Increase is 13 January 2003. Which means that the pension and lump sum would be increased in line with the 2003 Pensions Increase Order as soon as they are put into payment. The increase due under the Order for benefits with a beginning date of 13 January 2003 is 0.43%.

Consequently the pension paid on 13 January 2004 would be:

$$£14,175.00 + 0.43\% = £14,175.00 + £60.95 = £14,235.95 \text{ a year}$$

and the lump sum would be:

$$£70,875.00 + 0.43\% = £70,875.00 + £304.76 = £71,179.76.$$