

# RULE K1

## Cancellation of ill-health and injury pensions

**Rule K1 explains the power of a fire and rescue authority to cancel ill-health and injury pensions if the recipient is found to have recovered sufficiently to be fit for firefighting again.**

### **Power to review ill-health pension**

Rule K1(1) explains that –

- if you are receiving an ill-health pension (under Rule B3), and
- if you had continued to serve as a firefighter, you would not yet have reached the earlier of –
  - the date at which you could have chosen to retire (i.e. age 50 or over with 25 years' pensionable service), or
  - normal pension age

then your fire and rescue authority have the discretion to consider whether you have recovered sufficiently from your disability to be able to become a regular firefighter again. This is referred to in these notes as a “review”.

(Rule K1(1) used to refer to the requirement to retire on account of age – 55 all ranks to Station Officer, age 60 Assistant Divisional Officer and over. Compulsory retirement age was replaced by normal pension age on 21 November 2005.)

Rule K1(2) explains that if you are entitled to premature payment of deferred benefits (Rule B5) on health grounds then the fire and rescue authority has the same discretionary power to review this type of award as described above for an ill-health award.

### **Timing of review**

Under Rule K1(1) the fire and rescue authority can hold these reviews at such intervals as they think appropriate to your case. They could choose never to hold such a review.

### **Medical certificate**

Model forms suitable for medical certification on review are given at Annexe 7.

### **Cancellation or suspension of award(s)**

If, on review, the fire and rescue authority decide that you **are** again capable of performing the duties of a regular firefighter, Rule K1(3) allows them to –

- cancel payment of your ill-health pension, or
- suspend payment of your deferred pension.

If cancellation or suspension takes effect, then under Rule K1(5)(b), any injury pension to which you may also be entitled **must** be terminated as well.

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**Rule K1 (continued)**

**Conditions of cancellation**

If the fire and rescue authority do use their powers to terminate or suspend your pension, then under Rule K1(4) they must allow you to resume service as a regular firefighter in a role equivalent to, or higher, than that which you held when you retired with the ill-health award. However, this is conditional upon you presenting yourself for employment with the fire and rescue authority within one month of your pension being suspended or terminated. If you do not, your pension is not re-instated.

**Effect on future entitlement to pension**

If you resume employment as a regular firefighter within the one month time limit then the pensionable service you were entitled to count in the assessment of your ill-health award will be added to any new service you accrue on re-employment. This is explained in Rule F3.

If you resume employment as a regular firefighter some time after the one month time limit then you may still be able to reckon the service but on the terms set out in Rule F4(3).

Note, however, that any additional 60ths you were awarded as part of the ill-health pension will no longer count, and an adjustment must be made to your final benefits in respect of any earlier commutation of pension. This is explained in Rule B7(10).

If you do not resume employment, then your future entitlement to benefits (assuming you do not ask for your pension rights to be transferred to some other pension arrangement) will be as follows –

Termination of ill-health pension, less than 2 years' service

If you were entitled to the ill-health pension only because your infirmity was due to a qualifying injury (i.e. you had less than 2 years' pensionable service at retirement) then under Rule K1(5)(c) and (6) you must be given a refund of your "aggregate contributions", i.e. all the pension contributions you have paid as a firefighter or in respect of previous service transferred in to the FPS (a more detailed description is given in Rule A8), less

- the sums paid in respect of the ill-health pension (this would include any lump sum commutation), and
- the actuarial value of any Guaranteed Minimum Pension (see Rule J1) to which you would be entitled at State pensionable age, and
- the actuarial value of any "secured portion" of the pension, i.e. that part which relates to a period of service between 1961 and 1975 where you were classed as "non-participating" in the State Graduated Pension Scheme. (See Annexe 8 for more details about the State Scheme's inter-relationship with the FPS.)

These are very rare cases. It is most unlikely that any balance of contributions would be due to the firefighter after the required deductions.

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<b>Rule K1 (continued)</b>
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**Effect on future entitlement to pension (continued)**

Termination of ill-health pension, 2 or more years' service

In these circumstances, the pensionable service upon which your ill-health award was based would be used in the assessment of a deferred pension under Rule B5(3). The additional 60ths you were awarded as part of the ill-health pension will no longer count, and an adjustment must be made to your final benefits in respect of any earlier commutation of pension. This is explained in Rule B7(10).

A deferred pension is payable from age 60, unless your health again deteriorates to the point at which you could no longer carry out the duties of a regular firefighter if you were so employed. In this case the benefits can be paid earlier. See Rule B5 for a detailed explanation of deferred pensions.

If the ill-health pension to which you are entitled has a "secured portion", i.e. a part which relates to a period of service between 1961 and 1975 where a pension was classed as "non-participating" in the State Graduated Pension Scheme, then although Rule K1(3) allows the pension to be cancelled, Rule K1(5)(a) requires the secured portion element to be put back into payment when you attain State pensionable age. (See Annexe 8 for more details about the State scheme's inter-relationship with the FPS.) However, this is an old rule which is unlikely to have any impact on new cases where pensions are terminated on review.

Suspension of deferred pension

Your deferred pension would come back into payment at age 60 unless your health again deteriorates to the point at which you could no longer carry out the duties of a regular firefighter if you were so employed. In this case the benefits can be paid earlier. See Rule B5 for a detailed explanation of deferred pensions.

**Useful reference source**

- FSC 11/1990: extension of review to deferred benefits paid to optants-out on ill-health retirement
- FSC 30/2004: extension of review to all types of deferred benefits paid early on health grounds
- FPSC 4/2005: replacement of "compulsory retirement age" with "normal pension age"

<b>Points To Note</b>
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1. The purpose of an ill-health pension is to compensate you for the interruption of your career before retirement age. The purpose of the review is to determine if the payment of pension is still necessary – it would be unnecessary if you could resume firefighting. When you reach the point at which you would have been eligible to retire because of length of service and/or age regardless of your health, there is no need to review further.

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### Rule K1 (continued)

#### Points To Note continued

2. Your fire and rescue authority will only consider using these powers of review if they think that you have recovered your health sufficiently to resume firefighting and they are prepared to reinstate you. When you were medically examined before the ill-health/injury award was made, the medical practitioner may have been asked to recommend a review date after a certain period of retirement or it may be that your fire and rescue authority has a set policy for review. The fire and rescue authority does have the discretion to decide whether or not to follow the recommendation of the medical practitioner (this is not one of the questions contained in Rule H1 and so the recommendation would not be binding) but they should keep you informed of their decision.
3. The fire and rescue authority will conduct the review by again deciding your entitlement to an award under Rule H1. Consequently, because medical issues are involved, they must seek a medical opinion on which to base their decision, as required under Rule H1. An independent qualified medical practitioner will be selected and asked if you have become capable of performing the duties of a regular firefighter.
4. If you disagree with the fire and rescue authority's decision following the review, your rights of appeal under Rule H2 "Appeal against opinion on a medical issue" or under Rule H3 "Appeal to Crown Court" apply to you where relevant. The terms and time limits for appeal are similar to those which apply to a firefighter when an award is first made. See the explanation of Rules H2 and H3 for further details.
5. If you are also entitled to an injury award, see Rule K2 for the terms under which that must be reviewed.
6. The review of a deferred pension used to apply only to those cases where eligibility for a deferred pension arose on opting-out. Amendments to the FPS on 13 September 2004 now allow a review of **all** deferred pensions put into payment early on health grounds (subject to the age restriction for review).
7. Amendments to the FPS on 13 September 2004 also changed the definition of "regular firefighter" in Schedule 1 Part I. The amendment allows the "firefighting" role of the firefighter to be disregarded when assessing permanent disablement if, without a break in continuity in service, the fire and rescue authority—
  - (with medical guidance) decide that the firefighter is medically fit to undertake other duties appropriate to his/her role,
  - are of the view that the firefighter's retention would be of value to the service, and
  - they require the firefighter to continue in employment.

Because this amendment came into effect on 13 September 2004 it would not apply to any cases where a firefighter became entitled to a pension before that date. Also, regardless of the date at which you became entitled to your pension, if the question of disability arises as part of a review under Part K, there will not have been continuity of employment and so the test of whether you are again "capable of performing the duties of a regular firefighter" would have to take your capability for firefighting into account once again. The fire and rescue authority cannot cancel your pension under this Rule if you would be fit only for non-operational duties.