

Withdrawal of pension on conviction of certain offences

Rule K5 explains the circumstances in which a fire and rescue authority has the discretion to withdraw all or part of a pension (forfeiture).

Power to withdraw pension Rule K5(1) explains that, in given circumstances your fire and rescue authority have the discretion to withdraw your pension or, following your death, a pension payable to a dependant. This can be done on a permanent or a temporary basis.

Circumstances in which pension can be withdrawn The circumstances in which a pension may be withdrawn are given in Rule K5(2) and (3).
The circumstances are that –

- the person has been convicted of:
 - an offence of treason, or
 - one or more offences under the Official Secrets Act 1911 to 1989 for which the person has been sentenced, on the same occasion, to a term or terms of imprisonment amounting in aggregate to at least 10 years,(In the case of person entitled to a pension under Part C of the FPS, i.e. a spouse's or civil partner's pension, the offence must have been committed after the death of the firefighter.)

or

- the person has been convicted of:
 - an offence committed in connection with his or her service as an employee of a fire and rescue authority, and the Secretary of State has certified that this offence is gravely injurious to the interests of the State or liable to lead to serious loss of confidence in the public service.

Effect on pension Under Rule K5(1), the fire and rescue authority can decide whether to withdraw the pension –

- permanently or temporarily
- in whole or in part

but Rule K5(4) limits the extent to which the fire and rescue authority can withdraw the “secured portion” of the pension.

The “secured portion” is that part which relates to a period of service between 1961 and 1975 where a firefighter was classed as “non-participating” in the State Graduated Pension Scheme – see Annexe 8 which explains the inter-relationship between the FPS and the State pension scheme.

The secured portion cannot be withdrawn permanently. It must be put into payment when you reach State pensionable age unless at that time you are in prison or otherwise detained in legal custody.

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Rule K5 (continued)

Effect on pension (continued)

There are also limitations in respect of any Guaranteed Minimum Pension (GMP) to which the firefighter may have become entitled in respect of service in which he or she was treated as being contracted-out of the State Earnings Related Pension Scheme between 1978 and 1997 (see Annexe 8). Under Rule J1(7), the GMP may be forfeited only in respect of a conviction of the offences previously mentioned involving treason or under the Official Secrets Acts.

Rule K5(5) allows the fire and rescue authority, after withdrawal of the pension, to –

- restore it in full or in part to the pensioner from whom it was withdrawn, or
- apply it for the benefit of any dependant of the pensioner.

Useful reference source

- FSC 13/1975: announcement of changes to terms of forfeiture allowed under the provisions of the Social Security Act 1973 which came into force on 6 April 1975 (the introduction of contracting-out rules)
- FSC 15/1978: amendment to FPS so that the GMP element of a pension can be forfeited only if the firefighter or person entitled to the benefit has been convicted of an offence of treason or under Official Secrets Acts; amendment to FPS allowed a right of appeal against decision to forfeit pension although a fire authority discretion.
- FSC 39/1978: explanation of effect of contracting-out amendments to FPS.
- FPSC 5/2005: introduction of survivor's benefits for civil partners.

Points To Note

1. "Pensions" for the purposes of Rule K5 does not include an allowance, a gratuity, a grant, a lump sum or a refund of contributions. The benefits which can be forfeited are an ordinary, short service, ill-health, or deferred pension, or a widow(er)'s or civil partner's pension, or a pension credit pension (paid to a former spouse or civil partner of a firefighter under the terms of a pension sharing order issued by a court following divorce, dissolution of civil partnership or annulment).
2. Although a commuted lump sum may not be forfeited, if a pension is forfeited before it becomes payable (e.g. a deferred pension before age 60) there will be no pension left to commute for a lump sum.
3. It is for the fire and rescue authority in the first place to form a view on a case for forfeiture of pension. If a certificate from the Secretary of State is needed, the fire and rescue authority must put the facts before the Secretary of State who will then decide whether to issue a certificate under Rule K5(2)(b).
4. There is no general guidance about what constitutes an offence "considered liable to lead to serious loss of confidence in the public service". It should be noted that actual loss of confidence in the public service is not essential if the Secretary of State considers that an offence was liable to lead to such a loss of confidence.

Withdrawal of pension on conviction of certain offences**Rule K5 (continued)****Points To Note continued**

5. Where a fire and rescue authority apply for a certificate, it should be remembered that the offence must be committed "in connection with his (or her) service as an employee of a fire and rescue authority". In the case of a firefighter, by inference this would involve abuse of the role of firefighter. For example forfeiture might be considered appropriate where a firefighter has committed a serious offence of arson while on duty.
6. If the person whose pension is to be forfeited is dissatisfied with the decision, notwithstanding that the decision is made at the discretion of the fire and rescue authority, that person can use the appeal routes allowed under Rule H3. Rule H3 cannot normally be used to challenge decisions made under discretionary powers but Rule H3(3)(a) excludes determinations made by a fire and rescue authority under Rule K5.
7. Before 1 April 2006, an injury pension (whether paid to a former spouse or civil partner of a firefighter or other person under the FPS) could be considered for withdrawal under this Rule. With effect from 1 April 2006 this provision transferred, with other injury provisions, to the Firefighters' Compensation Scheme.