

RULE L5

Payment of awards - supplementary

Rule L5 states who should receive awards and in what circumstances; it also explains the circumstances in which certain sums can be withheld from payments.

Meaning of award	Rule L5(10) gives the meaning of “award” for purposes of this Rule. “Award” means a pension, an allowance, a gratuity or any other award under the FPS.
Payment to a minor (“pupil” in Scotland)	Rule L5(1) gives the fire and rescue authority the discretion to pay an award due to a minor (pupil in Scotland) to such other person as they feel appropriate. If they use this discretion that person must apply the award for the benefit of the child in accordance with any directions given by the fire and rescue authority.
Payment where a pensioner cannot manage his/her affairs	<p>If a fire and rescue authority believe that a person entitled to an award is incapable of managing his or her affairs (possibly but not necessarily because of a mental disorder), Rule L5(2) gives the authority the discretion to –</p> <ul style="list-style-type: none">• pay all or part of the award to a person caring for the pensioner, or such other person as they determine,• apply the award, or the remaining part of it in such a manner as they think best for the pensioner or his/her dependants.
Payment without probate (“confirmation” in Scotland)	<p>The Administration of Estates (Small Payments) Act 1965 sets a limit on sums which can be paid in respect of a person who has died, without the need to see probate or other proof of title to the money. The current limit (2006) is £5,000.</p> <p>Consequently if the fire and rescue authority have to pay a sum of more than the limit in respect of a deceased firefighter or pensioner where the FPS –</p> <ul style="list-style-type: none">• does not specify a recipient, or• specifies the recipient as personal representatives (for example in the case of a death grant payable in respect of an unmarried firefighter) <p>the fire and rescue authority must pay the sum to the personal representatives as named in Grant of Probate or Letters of Administration (England and Wales), or Confirmation (Scotland).</p> <p>Where the sum to be paid is less than the limit in the Act, Rule L5(3) instructs the fire and rescue authority as to how the sum should be paid. It says that the fire and rescue authority need not require probate or confirmation to be produced or any other proof of title and –</p> <ul style="list-style-type: none">• if there seems to be only one person entitled to the personal estate (“moveable estate” in Scotland) of the deceased, they can pay the sum to that person, or <p>in any other case, they can either pay the sum to one of the persons appearing to be entitled to the money, or distribute among all of them in such proportions as they feel appropriate.</p>

Rule L5 (continued)

Non-assignability

Rule L5(4) is a “non-assignability” clause. Basically, unless any other part of the FPS or over-riding law allows otherwise, it prevents –

- any part of your award being paid to anyone else apart from a dependant of yours
- in the case of an ordinary, short service, ill-health or deferred pension, any part of the “secured portion” of that pension being withheld from you beyond State pensionable age

The “secured portion” is that part of a pension 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.

The effect of Rule J1 would also prevent any sum equivalent to your Guaranteed Minimum Pension being withheld, too.

Bankruptcy

If you are declared bankrupt, Rule L5(5) prevents your award passing to any trustee or other person acting on behalf of the creditors

Loss to funds of fire and rescue authority – power to withhold sums

Circumstances in which the fire and rescue authority **can** withhold sums from your award are outlined in Rule L5(6), (7), (8) and (9).

The circumstances are where as a result of fraud, theft or the negligence of a regular firefighter in connection with his or her employment there has been a loss to the funds of a fire and rescue authority.

Rule L5(6) says that in these circumstances the fire and rescue authority can withhold all or part of a pension due to you.

There are conditions however –

- the sum withheld must not exceed the amount of the loss and if you dispute the amount of loss, no action can be taken to withhold any sum until a court order is given requiring it,
- if any part of your pension is derived from service transferred from a previous pension arrangement, that portion of the pension cannot be withheld to cover the debt, and
- the fire and rescue authority must give you a certificate showing the amount withheld.

Also, as usual, the terms of “contracting-out” of the State pension scheme have their effect to protect your pension rights with effect from State pensionable age. No portion of your “secured portion” or Guaranteed Minimum Pension can be withheld. (Your “secured portion” is that part of a pension 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.)

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Rule L5 (continued)

- Useful reference source**
- FSC 43/1975: the (Small Payments) Act limit increased to £1,500
 - FSC 39/1978: voluntary authorisation from firefighter for deduction of debt owed to fire authority to be made from award
 - FSC 11/1985: the (Small Payments) Act limit increased to £5,000

Points To Note

1. In the case of awards due to minors, they will normally be paid to the surviving parent or guardian. It is important to make sure that HM Revenue and Customs know that such a payment is part of the child's income, so that excessive tax deductions are not made. Usually your fire and rescue authority will do this, but the person receiving the payment should remember this when completing his or her tax return.
2. Following the death of a pension scheme member, it is not uncommon for the distribution of moneys due to the estate of the deceased to become a matter of dispute between family members. Sometimes pension scheme managers get involved in the dispute if a complaint is made to the Pensions Ombudsman about what some disappointed potential beneficiary may perceive as maladministration on the part of the managers. Although Rule L5(3) gives the fire and rescue authority total discretion as to the allocation of sums of less than the (Small Payments) Act limit, the fire and rescue authority may wish to consider requesting sight of Probate, etc. if it is to likely to be obtained for other purposes, and paying to the named personal representatives as it would if the sum due were greater than the limit. Alternatively, it would be sensible for the fire and rescue authority to ask their selected recipient(s) to complete some form of indemnity.
3. Although debts cannot normally be recovered from an award (other than in the circumstances outlined above) if, on retirement, you are agreeable to some sum owed to the authority being deducted from your pension or lump sum, this can be done as a net accounting transaction provided you sign an authorisation for the deduction to be made. Because of the protection given by Rule L5, however, you would be under no compulsion to sign such an authorisation.
4. Section 166(4) and (5) of the Pensions Act 1995 allows the non-assignability provision of Rule L5(4) to be over-ridden by an Order of a Court made under Section 23 of the Matrimonial Causes Act 1973 (i.e. an "Earmarking" Order issued in connection with divorce, etc., proceedings – see Annexe 14).
5. The Welfare Reform and Pensions Act 1999 has added more weight to Rule L5(5). Section 11 says:

“(1) Where a bankruptcy order is made against a person on a petition presented after the coming into force of this section, any rights of his under an approved pension arrangement are excluded from his estate.

(2) In this section an “approved pension arrangement” means –

.... (h) any pension arrangements of any description which may be prescribed by regulations made by the Secretary of State.”

The appointed day for the coming into force of section 11 was 29 May 2000 under The Welfare Reform and Pensions Act 1999 (Commencement No. 7) Order 2000.