



# Fire and Rescue Services Act 2004

## 2004 CHAPTER 21

### PART 4

#### EMPLOYMENT

##### *Pensions etc*

#### 34 Pensions etc

- (1) The Secretary of State may by order bring into operation one or more schemes making provision for the payment of pensions, allowances and gratuities to or in respect of—
- (a) persons who are or have been employed by a fire and rescue authority or by a Scottish fire authority;
  - (b) persons who die or have died while so employed.

[<sup>F1</sup>(1A) Subsection (1) is subject to sections 18 and 19 of the Public Service Pensions Act 2013 (restrictions on benefits provided under existing schemes).]

- (2) A scheme brought into operation under this section may in particular—
- (a) provide for the classes of person in respect of whose service awards may be made;
  - (b) provide for treating employment that is not employment by a fire and rescue authority or by a Scottish fire authority as if it were such employment for any purpose of the scheme, to the extent specified in the scheme and subject to any conditions specified in the scheme;

[<sup>F2</sup>(ba) provide for treating, for any purpose of the scheme, to the extent specified in the scheme and subject to any conditions specified in the scheme, holding office as the London Fire Commissioner as if it were employment by a fire and rescue authority in England where the terms and conditions of appointment to that office include—

- (i) resolving operational incidents, or
- (ii) leading and supporting others in the resolution of operational incidents;]

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- (c) provide for the making of contributions by employers and by persons in respect of whose service awards may be made;
  - (d) provide for the repayment of any such contributions or their application for the benefit of persons of a specified description;
  - (e) provide for the making of payments by the Secretary of State, fire and rescue authorities and Scottish fire authorities into a fund to which contributions have been made under the scheme;
  - (f) provide for the making of payments to the Secretary of State out of a fund to which contributions have been made under the scheme;
  - (g) provide for substituting the Secretary of State for a fire and rescue authority or a Scottish fire authority, for any purpose of the scheme;
  - (h) provide for the making to a fire and rescue authority, a Scottish fire authority or the Secretary of State of payments in respect of a person's previous service, including provision for such payments to be made by the Secretary of State;
  - (i) provide for any such payments to be reimbursed out of a fund to which contributions have been made in respect of the previous service to which the payments related;
  - (j) provide for the payment and receipt by fire and rescue authorities or Scottish fire authorities of transfer values or of other lump sum payments made for the purpose of creating or restoring rights to pensions, allowances and gratuities;
  - (k) provide for conditions subject to which an award under the scheme may be made, for the manner in which questions arising under the scheme are to be determined and for appeals from determinations of such questions;
  - (l) provide for excluding or modifying rights to compensation or damages in respect of injuries, in cases where awards are made under the scheme in respect of the injuries;
  - (m) make incidental, supplemental, consequential and transitional provision.
- (3) An order under this section may take effect from a date which is earlier than that on which the order is made.
- (4) An order under this section may vary or revoke a scheme brought into operation by an order under this section.
- (5) Before making, varying or revoking an order under this section the Secretary of State must consult any persons he considers appropriate.
- (6) A person commits an offence if he does an act or makes an omission as a result of which he is injured or becomes ill, for the purpose of obtaining, for himself or another person—
- (a) an award under a scheme brought into operation under this section, or
  - (b) a sum in respect of the repayment or application of contributions made under such a scheme.
- (7) A person guilty of an offence under subsection (6) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding [F3the general limit in a magistrates' court] or a fine not exceeding the statutory maximum;
    - (ii) in Scotland, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.
- (8) A scheme brought into operation under this section may authorise the forfeiture of the whole or part of an award or sum obtained by a person who has been convicted of an offence under subsection (6).
- (9) In relation to an offence under subsection (6) committed before [<sup>F4</sup>2 May 2022], the reference in subsection (7)(a) to [<sup>F5</sup>the general limit in a magistrates' court] is to be read as a reference to 3 months.
- [<sup>F6</sup>(10) In this section “Scottish fire authority”—
- (a) means the Scottish Fire and Rescue Service, and
  - (b) except in subsections (2)(e) and (h), includes a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5) (despite the repeal of that section by the Police and Fire Reform (Scotland) Act 2012 (asp 8)).]
- [<sup>F7</sup>(11) References in subsection (1) to persons who are or have been employed by a fire and rescue authority include persons who are or have been employed by the chief constable of the police force for a police area having been—
- (a) transferred to the chief constable under a scheme made under section 4I(1),  
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...
  - (b) appointed by the chief constable under section 4I(4).
  - [<sup>F9</sup>(c) transferred to the chief constable under a scheme made by virtue of section 107EC(1) of the Local Democracy, Economic Development and Construction Act 2009, or
  - (d) appointed by the chief constable under section 107EC(2) of that Act.]
- (12) References in the other provisions of this section to a fire and rescue authority include a chief constable of the police force for a police area who employs persons of the kind mentioned in subsection (11).]

#### Textual Amendments

- F1** S. 34(1A) inserted (1.4.2014) by Public Service Pensions Act 2013 (c. 25), s. 41(2), **Sch. 8 para. 27** (with Sch. 11 para. 8); S.I. 2014/839, art. 4(2)(1)
- F2** S. 34(2)(ba) inserted (22.2.2018) by The Policing and Crime Act 2017 (Consequential Amendments) Regulations 2018 (S.I. 2018/226), regs. 1, **10(3)**
- F3** Words in s. 34(7)(a)(i) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1 table**
- F4** Words in s. 34(9) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), **Sch. Pt. 1**
- F5** Words in s. 34(9) substituted (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1 table**
- F6** S. 34(10) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 7(2)**; Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 66(2)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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- F7** S. 34(11)(12) inserted (31.1.2017 for specified purposes, 3.4.2017 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), s. 183(1)(5)(e), **Sch. 1 para. 11**; S.I. 2017/399, reg. 2, Sch. para. 38
- F8** Word in s. 34(11)(a) omitted (31.1.2017 for specified purposes, 17.7.2017 in so far as not already in force) by virtue of Policing and Crime Act 2017 (c. 3), **ss. 8(8)(a)**, 183(1)(5)(e); S.I. 2017/726, reg. 2(a)
- F9** S. 34(11)(c)(d) inserted (31.1.2017 for specified purposes, 17.7.2017 in so far as not already in force) by Policing and Crime Act 2017 (c. 3), **ss. 8(8)(b)**, 183(1)(5)(e); S.I. 2017/726, reg. 2(a)

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**Modifications etc. (not altering text)**

- C1** S. 34(1)-(5) transfer of functions (23.3.2005) by Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), art. 1, **Sch.** (with art. 6)
- C2** S. 34(8) transfer of functions (23.3.2005) by Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), art. 1, **Sch.** (with art. 6)

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**Commencement Information**

- I1** S. 34 in force at 7.9.2004 for specified purposes except in relation to W. and 1.10.2004 otherwise except in relation to W. by S.I. 2004/2304, **art. 2** (with art. 3)
- I2** S. 34 in force at 10.11.2004 for W. by S.I. 2004/2917, **art. 2**

**Changes to legislation:**

There are currently no known outstanding effects for the Fire and Rescue Services Act 2004, Section 34.