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NATIONAL JOINT COUNCIL FOR LOCAL AUTHORITY FIRE AND RESCUE SERVICES

**To: Chief Fire Officers
Chief Executives/Clerks to Fire Authorities
Chairs of Fire Authorities
Directors of Human Resources at Fire Authorities

Members of the National Joint Council**

8 March 2011

CIRCULAR NJC/04/11

Dear Sir/Madam

PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS - AMENDMENTS TO THE SCHEME OF CONDITIONS OF SERVICE (GREY BOOK)

1. Authorities will be aware from circular NJC/03/11 that a settlement has now been identified in the matter of the Employment Tribunal cases brought by the Fire Brigades Union under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations which covers the period from 1 July 2000 to 30 June 2010.
2. In accordance with the outcome of further discussion with the respective legal representatives, a number of amendments to the Scheme of Conditions Service (Grey Book) have been agreed by the National Joint Council in order to ensure Grey Book compliance with the Regulations from that point onwards.
3. It is recognised that individual fire and rescue services may also need to review any local practices e.g. training, and policies to consider whether additional change is needed at local level.
4. This circular deals specifically with the amendments referred to in paragraph 2 above, which are effective from 1 July 2010. Affected paragraphs are listed below with changes shown in *italics*.

SECTION 4 - PART B - PAY

Attendance at training centres

5. Existing paragraph 14 is amended to state:
“An employee who is required to attend a course at a training centre shall receive the appropriate basic weekly rate of pay in respect of each week of the course, *pro rated as appropriate. For the avoidance of doubt, the appropriate basic weekly rate of pay for an employee working on the retained duty system will be the same basic weekly rate of pay as a wholetime employee in the same role.*”

Acting up and temporary promotion

6. There is no change in the wholetime position which is reflected in a new paragraph 20:
“For wholetime employees the payment shall be for a minimum of one shift”.
7. A new paragraph 21 states:
“*For retained duty system employees who are required to undertake the duties of a higher role for an operational incident payment shall be for:*
 - a. *the full duration of that attendance; and*
 - b. *the full duration of any further attendances (whether or not the employee is required to undertake the duties of a higher role), up to the expiry of the period of continuous cover being provided, subject to that period not exceeding 24 hours from the commencement of the attendance referred to in (1) above.*”
8. A new paragraph 22 states:
“*Further in respect of retained firefighters undertaking the duties of a higher role for any pre-defined period, such as duties referred to in paragraph 16(1) of Part A of this section, payment shall be made in respect of that period only.*”
9. The existing paragraph 20 is *renumbered to paragraph 23.*

Renumbering of existing paragraphs 21 to 32

10. As a consequence of the changes relating to acting-up and temporary promotion above, there are number changes to the remaining paragraphs in Part A:

Existing paragraph 21 *becomes 24*
Existing paragraph 22 *becomes 25*
Existing paragraph 23 *becomes 26*
Existing paragraph 24 *becomes 27*
Existing paragraph 25 *becomes 28*
Existing paragraph 26 *becomes 29*
Existing paragraph 27 *becomes 30*
Existing paragraph 28 *becomes 31*
Existing paragraph 29 *becomes 32*
Existing paragraph 30 *becomes 33*

Existing paragraph 31 *becomes* 34
Existing paragraph 32 *becomes* 35

SECTION 4 - CONDITIONS OF SERVICE FRAMEWORK - PART C - LEAVE

Annual leave for employees on the retained duty system

15. The existing paragraph 6 is replaced by a new paragraph 6:

“A week’s pay during a period of annual leave shall be the average weekly wage as defined in Appendix C, paragraph C.”

Public holiday leave

16. The existing paragraph 13 is amended to state:

“For employees who work on a shift system or the retained duty system, Christmas Day, 26th December and New Year’s Day will be treated as public holidays on whichever days of the week they fall, irrespective of alternative public holidays announced by the Government.

Public holiday arrangements for employees on the retained duty system

17. The existing paragraph 25 is amended to state:

“An employee in the role of Station Manager or below (but not on the flexible duty system) who is required to work on a public holiday shall be paid double the disturbance and activity payments at Part B paragraphs 10 to 13 of this Section (which shall not be pensionable). In addition, the employee shall be granted a day’s leave in lieu in respect of which the employee shall not be required for duty and shall receive 1/7th of their average weekly wage. Average weekly wage shall have the meaning given to it in Appendix C, paragraph C. A volunteer carrying out operational fire fighting duties shall be paid at double the appropriate hourly rate.

End of course leave

18. The existing paragraph 26 is amended to state:

“Fire and rescue authorities should put in place reasonable arrangements for paid leave for employees returning from a residential training course, including retained duty system employees. The amount of leave should have regard to:

- c. the length of the course (including travel time);*
- d. the nature of the course; and*
- e. the employee’s working pattern.*

Trade union facilities

19. The existing paragraph 27 is amended to state:

“The NJC has a strong commitment to joint consultation and negotiation. Fire and rescue authorities shall therefore provide officials of recognised

trade unions, *regardless of which duty system they work under*, with reasonable facilities necessary for them to carry out their trade union duties, including paid leave to attend meetings of the NJC and other relevant fire and rescue service national committees.

20. The existing paragraph 28 is amended to state:

“Where a part-time employee (including an employee on the retained duty system) attends a joint consultative or negotiating meeting outside of his or her normal working time the time spent at the meeting should be paid or time off in lieu granted. Where a retained duty system employee attends such a meeting and receives payment instead of time off in lieu they shall be paid at the appropriate basic hourly rate for his/her role.

Leave for public duties

21. The existing paragraph 29 is amended to read:

“Paid leave shall be granted to employees (including an employee on the retained duty system where he or she would otherwise have been providing retained cover at that time) undertaking jury service and, in appropriate cases, serving on public bodies for undertaking public duties. Where an allowance is payable for loss of earnings this should be claimed by the employee and repaid to the fire and rescue authority. “

SECTION 4 - CONDITIONS OF SERVICE FRAMEWORK - PART D - MATERNITY, CHILDCARE AND DEPENDENCY

22. The existing paragraph 36 is amended to state:

“For employees on the retained duty system a week’s pay during a period of maternity leave shall have the meaning given to it in Appendix C, paragraph C.”

SECTION 5 - HEALTH ISSUES – PART B – OCCUPATIONAL HEALTH

23. The existing paragraph 16 is amended to state:

“Where an employee on the retained duty system is on authorised sick leave ‘full pay’ shall be calculated on a daily basis. Employees shall receive 1/7th of their average weekly wage per day. Weekly wage shall have the meaning given to it in Appendix C, paragraph C.

24. The existing paragraph 17 is amended to state:

“Where an employee on the retained duty system (or a volunteer carrying out operational firefighting duties) is on authorised sick leave as a result of an illness or injury arising out of authorised duty and can provide satisfactory evidence that, as a direct result of the illness or injury, he or she is suffering a financial loss in respect of his or her usual occupation, ‘full pay’ means the amount of the actual loss (including his or her average weekly wage as defined in Appendix C, paragraph C) subject to the maximum basic weekly rate of an Area Manager.

25. The existing paragraph 18 is amended to state:

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“For employees on the retained duty system (or volunteers) and for the purposes of paragraph 17 above, ‘authorised duty’ includes occasions on which the employee (or volunteer) is responding directly and promptly to an emergency call. It shall not include travelling to the station for any other purpose. Where the fire and rescue authority is satisfied that the employee (or volunteer) has been injured as a result of returning directly to his or her home or work immediately after attending the station in response to an emergency call the authority may treat the journey as authorised duty. Any decision to regard such a journey as authorised duty shall concern only the question of calculating entitlement to sick pay. It shall not be regarded as determining whether the employee (or volunteer) was on duty for any other purpose.”

SECTION 6 – GRIEVANCE AND DISCIPLINARY

Suspension

26. The existing paragraph 73 is amended to state:

“Full pay for those employees on the retained duty system will be calculated on a daily basis. Employees shall receive 1/7th of their average weekly wage per day. Average weekly wage shall be as defined in Appendix C, paragraph C.”

APPENDIX C

27. Insert new paragraph C:

“For an employee working on the retained duty system where the “average weekly wage” (or “remuneration”) applies this shall mean the employee’s average weekly wage or remuneration in the previous 12 weeks excluding any week in which she or he has been on sick leave or received no pay. Where there has been an increase in the rates of fees or payments during that 12 week reference period, the new rate shall be used to make the calculation as if it applied throughout the reference period. Further, given that the annual retainer will continue to be paid during periods of paid sick leave or other paid authorised absences (subject to any reduction to half payment in accordance with Section 5, Part B, paragraph 10), payment of the retainer should be disregarded when calculating average weekly wage.”

INTERIM AND PROTECTION ARRANGEMENTS SECTION

Medical charges and expenditure

28. The existing paragraph 8 is amended to state:

“A fire and rescue authority shall reimburse an employee (other than one ~~on the retained duty system~~ or in a control-specific role) whose continuous service under this scheme of conditions of service commenced prior to 1st November 1994 any charges incurred under Sections 77, 78 or 79 of the

National Health Service Act 1977. An employee who refuses or neglects to undergo a medical examination required by the authority shall not be entitled to such reimbursement.”

Yours faithfully

SARAH MESSENGER

MATT WRACK

Joint Secretaries