

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

Item No. 6

HUMAN RESOURCES COMMITTEE: 8 JULY 2013

SUBJECT: FIREFIGHTER PENSION SCHEME CONSULTATION RESPONSES

**JOINT REPORT OF THE CHIEF FIRE OFFICER, CLERK TO THE AUTHORITY,
THE FINANCE OFFICER AND PERSONNEL ADVISOR**

1 INTRODUCTION

- 1.1 As Members will recall, The Coalition Government commissioned Lord Hutton to chair the Independent Public Service Pensions Commission to review public service pensions and to make recommendations on how they can be made sustainable and affordable in the long-term and fair to both public sector workers and the taxpayer.

2 BACKGROUND

- 2.1 In his interim report, Lord Hutton explained that the value and cost of a public service pension has increased by around a third because of longer life expectancy over the last fifty years, and that these costs had generally fallen to the taxpayer. Lord Hutton therefore recommended that if the Government wished to make short term savings, then raising contribution rates would be the most effective way to achieve that objective. This would also make for a fairer balance between what employees pay and what other taxpayers have to pay.
- 2.2 At the Spending Review the Government accepted Lord Hutton's rationale and announced the intention to increase employee contributions by 3.2% of pensionable pay, on average, to be phased in over a three year period from April 2012.

3 2012-13 CONTRIBUTION INCREASES

- 3.1 A statutory consultation paper proposing increases in the firefighters' pension schemes in England from 1 April 2012 was published on 9 September 2011, and proposed tariffs designed to deliver a 1.28 percentage point increase, on average, across the two firefighters' pension schemes. The Government response to that consultation was published on 29 March 2012.
- 3.2 Ministers, in the light of the statutory consultation responses, decided that it was appropriate, in the specific case of the firefighters' pension schemes, to proceed with an altered contribution rate for 2012/13. The approach sought to generate an increased yield of 0.64 percentage points from the two firefighters' pension

schemes, rather than the originally proposed 1.28 percentage points and was implemented by Statutory Instrument 2012 No. 953 (for the Firefighters' Pension Scheme (1992)) and Statutory Instrument 2012 No. 954 (for the New Firefighters' Pension Scheme (2006)).

4 2013-14 CONTRIBUTION INCREASES CONSULTATION

4.1 On 29 November 2012 the Government published a consultation paper setting out proposals to increase the level of employee contribution rates in the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) for the financial year 2013/14

<https://www.gov.uk/government/consultations/firefighters-pension-scheme-increases-to-employee-contribution-rates-from-1-april-2013>.

4.2 The proposal was to increase contributions in the firefighters' pension schemes by 1.28 percentage points, on average, from April 2013.

4.3 At its meeting held on 11 February 2013 Members of the Human Resources Committee approved that the Chief Fire Officer submitted a response to the consultation.

5. OUTCOME OF CONSULTATION

5.1 Since the statutory consultation on contribution increases closed, the Department has considered the responses and evidence received. On the 26 March the Department published its response to the consultation.

This can be found at:

<https://www.gov.uk/government/consultations/firefighters-pension-scheme-increases-to-employee-contribution-rates-from-1-april-2013>

5.2 Ministers have considered the statutory consultation responses, and the evidence on firefighters opting out or choosing not to join the pension scheme. The Government has noted that opt outs remain low and on a similar basis to the number of opt outs in 2011-12. The Government has therefore concluded that there remains a rationale to proceed with increased contributions from April 2013 as consulted on, to help rebalance costs between the taxpayer and public sector workers. The Government has also concluded that there remains a rationale to provide some protection for members of the 2006 Scheme who, of the two Schemes, appear to be the workforce section most likely to opt out.

5.3 The Government is mindful of the need to continue monitoring the effects of contribution increases. All evidence will be carefully considered, including on those opting out or choosing not to join the scheme, before making decisions on contribution increases from April 2014.

5.4 The necessary amending legislation has been made. Details of the contribution rate increases are as follows:

Pensionable Pay Band	FPS	NFPS
Up to and including £15,000	11.0%	8.5%
More than £15,000 and up to an including £21,000	11.9%	9.1%
More than £21,000 and up to an including £30,000	12.9%	9.6%
More than £30,000 and up to an including £40,000	13.2%	9.9%
More than £40,000 and up to an including £50,000	13.5%	10.1%
More than £50,000 and up to an including £60,000	13.7%	10.2%
More than £60,000 and up to an including £100,000	14.1%	10.5%
More than £100,000 and up to an including £120,000	14.5%	10.8%
More than £120,00	15.0%	11.1%

5.5 The employers' contribution rate is not affected by these changes.

6. UPDATE ON OTHER PROPOSED CHANGES TO PENSION SCHEMES

6.1 At its meeting held on 17 October 2011 Members of the Human Resources Committee approved that the Chief Fire Officer submitted a response to the consultation.

6.2 This consultation set out a number of proposed changes to the firefighters' pension scheme and new firefighters' pension scheme. It includes the following key proposals:

- the removal of rule A14, compulsory retirement on the grounds of efficiency
- changes to the indexation of additional pension benefits
- changes to the maximum commutation payment
- proposals to deal with potential age discrimination
- amendments to the medical and non-medical appeals processes
- abatement of pensions
- technical amendments and alignments with tax legislation

6.3 Removal of Rule A14 compulsory retirement on grounds of efficiency

6.3.1 The intention of this proposal was to revoke Rule A14 so that in future any decision to compulsorily remove a firefighter from employment would be dealt with in accordance with employment and equalities legislation rather than the pension scheme rules.

6.3.2 Following consideration of the responses, the Department's position remains that decisions to compulsorily remove an employee from employment should be made in accordance with employment and equalities legislation and not through the rules of the pension scheme. The Department intends to proceed with the amendment as consulted upon.

6.4 Change in indexation from Retail Prices Index to indexation under the Pensions Increase Act 1971 for additional pension benefits

6.4.1 The intention of this proposal was to change the mechanism for index linking additional pension benefits, in the accrual phase, to be in line with the *Pensions (Increase) Act 1971*. At present this has the effect of index linking additional pension benefits in the accrual phase at the Consumer Prices Index rather than the Retail Prices Index, in line with the Government's announcement at the Emergency Budget 2010.

6.4.2 A number of the responses misunderstood the impact of the proposal, which is about the uprating of additional pension benefits during the accrual phase. The proposal had no effect on the indexation of pensions in payment, or pensions that have been deferred, which are already uprated in accordance with the *Pensions (Increase) Act 1971*.

6.4.3 The Department believes that these changes will remain appropriate prior to the introduction of the 2015 Scheme as future scheme liabilities would continue to accrue in the Scheme under additional pension benefit arrangements. Following consideration of the responses received, the Department's intention remains to retrospectively amend the scheme so that the uprating mechanism for additional pension benefits during the accrual phase is in accordance with the *Pensions (Increase) Act 1971* from 11 April 2011.

6.5 **Rule B7: Commutation general provision**

- 6.5.1 The proposal is intended to help authorities manage workforce levels and, as such, the Department maintains that the effect on cash-flow of paying enhanced commutation should be met by the authority and not by central government. This would ensure each authority gave full consideration to the appropriateness of offering the enhancement, ensuring that value for money is being achieved before making a final decision on whether or not to exercise the discretion available. Any savings would accrue to the scheme, for the benefit of employers, and reflected in subsequent valuations.
- 6.5.2 Following consideration of the responses received, the Department intends to proceed on the basis of the consultation, but with modifications to ensure that employers fully consider the economical, effective and efficient management of their functions, and the costs likely to be incurred in the particular case.

6.6 **Exemptions from payment of pension contributions**

- 6.6.1 The proposal to provide a contributions holiday was based on a particular understanding of the Department's legal obligations, rather than representing a specific Departmental policy objective. The policy objective is to ensure that the scheme is not discriminatory, directly or indirectly, on the grounds of age.
- 6.6.2 Following consultation, the Department has reconsidered the legal position in light of responses received and is now of the view that the scheme is unlikely to be discriminatory on the grounds of age. However, there are arguments for and against the issue and, in order to get legal certainty on the position, the Department now proposes to seek a declaration from the Courts.

6.7 **Review of Medical Opinion**

- 6.7.1 The intention of the proposal is to amend the procedures for the consideration of medical questions so that appeals may be dealt with quicker and more efficiently. The proposals seek to bring the appeals process for members of the 1992 Scheme into line with the arrangements for the 2006 Scheme.
- 6.7.2 Following consideration of the responses, the Department intends to proceed with the proposal as consulted on but with an amendment to the language used so that when a Board member undertakes an initial review of the documentation submitted for the appeal they can make a determination as to whether there is "sufficient" information available to carry out a hearing,

6.8 **Appeals on other issues (non-medical issues)**

- 6.8.1 The intention of this proposal is to ensure that the appeal for a non-medical issue is undertaken through internal dispute arrangements which are required to be set up under the Pensions Act 1995 and a subsequent process of appeal to the Pensions Ombudsman.

6.8.2 The Department following consideration of the responses will proceed with the proposal as consulted on.

6.9 **Abatement**

6.9.1 The intention of the proposal is to widen the authorities' discretion to enable the abatement of a pension paid to a member of the scheme who is employed in any role by any fire and rescue authority. The proposal also requires the authority that is paying the pension to pay into the pension fund the amount of pension that is paid that could have been subject to abatement under the scheme rules.

6.9.2 Whilst the Department fully supports the use of abatement, it has given further consideration to the implementation of the proposal following consultation. In particular, the Department intends to amend the proposal so that the associated pension fund payment would only apply to cases where the re-employment occurred after the coming into force of the amending statutory instrument.

6.9.3 The proposal would also continue to allow authorities to maintain their own local policies as it does at present and would extend each authority's discretion to abate the pension.

6.10 **Pension tax and other amendments**

6.10.1 The intentions of the proposals were to amend the scheme terminology to be consistent with the tax simplification measures introduced under the Finance Act 2004, and to update the scheme rules so that they are consistent with the legislation passed since they were last amended. Whilst the Department consulted on the contents of the draft amending Order, the effect of some of the proposals, which could have the effect of changing a members' pension entitlement, may not have been made clear enough as part of the consultation exercise. The Department therefore proposes to proceed with only some of the proposals set out.

7 **CONCLUSION**

7.1 The Chief Fire Officer is of the opinion that the various proposed changes to the pension schemes are both complex and highly sensitive with the potential to impact detrimentally on industrial relations.

7.2 Changes to pensionable pay, abatement rules and especially proposed increases in contribution are very sensitive issues.

8 RISK MANAGEMENT

- 8.1 A risk assessment has been undertaken to ensure that the risk to the Authority has been minimised as far as practicable. The assessment has considered an appropriate balance between risk and control; the realisation of efficiencies; the most appropriate use of limited resources; and a comprehensive evaluation of the benefits. The risk to the authority has been assessed as high utilising the standard risk matrix based on control measures being in place. The complete risk assessment is available on request from the Chief Fire Officer.

9 FINANCIAL IMPLICATIONS

- 9.1 All financial implications are included within the body of this report however Members should note that the employers' contribution rate is not affected by these changes.

10 EQUALITY AND FAIRNESS IMPLICATIONS (2013-14 CONTRIBUTION INCREASES CONSULTATION)

- 10.1 The Government has considered whether there are equalities issues that will mean that any group with a protected characteristic will be disproportionately affected by the proposals, and has taken account of the comments and views expressed in response to the consultation. Detailed consideration is set out in the published equality statement.
- 10.2 Having had due regard to the potential impact on any specific group, the Government has concluded that the tariffs consulted on for the 1992 and 2006 Schemes represent a reasonable and proportionate means of achieving its objectives. In particular, the Government is clear that the tiered contribution rates are consistent with its objective to ensure that the increase is progressive and protects the lower paid and that higher earners will contribute more towards their pensions. Workforce demographics, and pension benefits, differ across the public service and comparisons between schemes are not appropriate.
- 10.3 The Government has carefully considered the views expressed concerning female and ethnic minority workers. Evidence suggests that these protected groups tend to be newer, lower paid, recruits to the fire service and therefore, if they chose to do so, would become members of the 2006 Scheme. Some protection has been provided for 2006 Scheme members, who appear to be the workforce demographic most likely to opt out of their pension scheme, and the tiered contribution bands should also offer some protection to those in lower pay bands.

11 HEALTH AND SAFETY IMPLICATIONS

- 11.1 There are no health and safety implications in respect of this report.

12 RECOMMENDATIONS

12.1 Members are recommended to:

- a) Consider the content of this report;
- b) Receive further reports as appropriate.

BACKGROUND PAPERS

The undermentioned Background Papers refer to the subject matter of the above report:

- Firefighters' Pension Scheme 1992 and the New Firefighters' Pension Scheme 2006: Proposed increases to employee contribution rates, effective from 1 April 2013 – consultation

Summary of consultation responses and the Government's response.
- Amendments to the Firefighters' Pension Scheme 1992 and the New Firefighters' Pension Scheme 2006: Consultation – 3rd August 2011.