

SUBJECT: FIREFIGHTER PENSION SCHEME CONSULTATIONS

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

1 INTRODUCTION

- 1.1 The Government has issued two consultation documents covering changes to the Firefighter's Pension Scheme (FPS) and the New Firefighter's Pension Scheme (NFPS). This report proposes a response for consideration by Members.

2 BACKGROUND

- 2.1 The 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.
- 2.2 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.
- 2.3 At the Spending Review the Government accepted Lord Hutton's rationale and announced the intention to increase employee contributions by 3.2% on average by 2014-15.
- 2.4 The Government accepted the broad principles set out in Lord Hutton's report as a basis for consultation. On 19 July the Chief Secretary to the Treasury set out to Parliament the Government's timetable for the proposed increase in employee contribution rates and discussions with business partners around the wider pension reforms.
- 2.5 Members are advised that changes to future firefighter pension provision is likely to be based upon the independent review and contain provisions for a 40 year pension scheme with increased contributions, an increased minimum retirement age (possibly 60) and reduced benefits when compared to both the existing schemes. However, as yet no proposals or details are available.
- 2.6 These consultations apply to proposed changes to both of the fire service pension schemes in England only, each of which has already been the subject of consultation or discussion at the Firefighters' Pension Committee (containing representatives from the Employers, Unions and other interested parties).

2.7 The first consultation concludes on 26th October 2011 and the second on 2nd December 2011.

3 **CONSULTATION**

3.1 The first consultation sets out a number of policy proposals in respect of suggested changes to the two fire service pension schemes, namely, the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) and consults on the following provisions:

- Rule A14: Compulsory retirement on grounds of efficiency – remove rule
- Changes to indexation of additional pension benefits - to the Consumer Prices Index
- Commutation - discretion to permit the maximum payment
- Pensionable pay – definition
- Age discrimination - contributions holiday
- Medical appeals - power to review decisions
- Appeals on non-medical issues - appeal to Pensions Ombudsman
- Withdrawal of pension whilst employed by a fire and rescue authority (abatement)
- Pensions tax - alignment with tax legislation
- Other, technical amendments (including the updating of statutory references)

3.2 The following sections of this report cover the changes in more detail and include recommended responses:

3.2.1 Removal of compulsory retirement in the Firefighters' Pension Scheme given that the means to compulsorily remove any employee from employment should be undertaken under employment law.

3.2.1.1 Rule A14 of the Firefighters' Pension Scheme permits a fire and rescue authority to compulsorily retire a firefighter who is at least 50 years old and can reckon at least 25 years' pensionable service.

3.2.1.2 Government policy is to prevent age being a consideration for compulsory retirement or redundancy. The Government is phasing out the default retirement age, which means in future it will be discriminatory to compulsorily retire an employee who is aged 65 or without objective justification. In addition, the Employment Rights Act is also being amended to mean that retirement will no longer be a fair reason for dismissal.

3.2.1.3 Any member of the Firefighters' Pension Scheme who has attained age 50 and can reckon at least 25 years pensionable service already has a right to retire with immediate payment of their pension. Any removal of Rule A14 does not change this position.

3.2.1.4 The proposal is to revoke Rule A14 so that, in future, any decision to compulsorily remove a firefighter from employment is dealt with in accordance with employment and equalities law.

3.2.1.5 The proposal does have some merit as this Authority has never used Rule A14 primarily due to the potential discrimination due to age the Rule may afford. In addition, sufficient provision already exists within employment law to effectively manage early removal from employment. This would be enhanced if the Authority was to have the additional flexibility suggested in the later proposal to uplift the commutation limit to one quarter of their pension for firefighters eligible for retirement. There is therefore no reason to disagree with this proposal.

3.2.1.6 The terms of the Firefighters' Scheme have however never been clear as regards the pension rights of a firefighter who is made redundant after age 50. It would be beneficial if the Department would clarify the situation either as an explanatory circular or by appropriate amendments to the regulations

3.2.2 Additional pension benefits: long service increment, and continual professional development (Change in indexation from Retail Price Index to Consumer Price Index)

3.2.2.1 The Emergency Budget on 22 June 2010 announced the intention to switch the basis of up-rating public service pensions from the Retail Price Index to the Consumer Price Index.

3.2.2.2 It is proposed that the Scheme rules will be amended to increase any additional pension benefit accrued for long service increment (where applicable) or continual professional development payment. Uprating of public sector pensions by CPI was applied from April 2011 and it is proposed to apply the uprating retrospectively 11 April 2011 to allow consistency.

3.2.2.3 The proposal is line with Governmental policy however such a change will have and is having a material effect on the value of firefighter pensions. The Government changed the factor used for indexation for pensions in payment or deferred pensions from RPI to CPI.

3.2.2.3.1 This part of the consultation would seem to be an extension of that change by amending the scheme (s) rules so that pension benefits for pensionable additional payments reflect the change from RPI to CPI already implemented by Government. It is considered that it would be premature to consider such changes until the outcome of the Judicial Review is known.

3.2.3 Provide fire and rescue authorities with a discretion to uplift the commutation limit to one quarter of their pension for a Firefighters' Pension Scheme member eligible for retirement.

3.2.3.1 Currently, members who have reached the normal pension age (55) or have accrued at least 30 years' service may commute up to one quarter of their pension for a lump sum. In all other circumstances, the amount that a member may commute is limited and may not exceed 2.25 times the amount of pension.

3.2.3.2 A member may retire if they are aged 50 or over and have 25 or more years' service. However, as the commutation limit is likely to apply in these circumstances, members may be reluctant to take retirement voluntarily. Fire and rescue authorities have asked for the discretion to disregard the limit.

- 3.2.3.3 The draft Order makes provision for the limit on the amount of pension that may be commuted for a lump sum to be increased up to a quarter of the pension **at the discretion of the fire authority**. However, should a fire authority elect to exercise their discretion, the additional costs will be met from a fire authority's operating fund, **not** from the pension account.
- 3.2.3.4 In addition, the amount of pension commuted is dependent on actuarially determined commutation factors. As some of the existing factors are higher than 20:1, there may be additional tax implications for some members if the total sum commuted exceeds the maximum permitted by Her Majesty's Revenue and Customs, which is currently 25 per cent of the total value of benefits vested. If the sum exceeds that allowed, the fire and rescue authority may be subject to a Scheme Sanction Charge. As the Order makes provision to commute up to one quarter of the full amount of the pension, fire and rescue authorities may avoid these tax charges by giving consideration to the level of enhanced commutation offered.
- 3.2.3.5 Notwithstanding the above should the discretion be available this could be beneficial to the Authority in that it could help towards encouraging staff to leave the Service should the Authority deem it appropriate (based on sound financial advice in a business case), however Members should note that exercising this discretion may result in an additional cost for the Authority.

3.2.4 Redefinition of pensionable pay and average pay for "final salary" arrangements in the fire service schemes, in particular in relation to how allowances and emoluments are dealt with.

- 3.2.4.1 The definition of pensionable pay in the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) is the amount determined in relation to the performance of the duties of a firefighters' role and to reflect the additional pension benefit arrangement in place for any amount paid in respect of continual professional development. Temporary allowances or emoluments should not be included as pensionable pay.
- 3.2.4.2 Additional pension benefits were introduced to the fire pension schemes in 2007 to protect pension benefits accrued by members on elements of earnings which could vary and to protect the schemes from the cost of past service costs which arose when members received an increase on these variable earnings in the last three years' of service.
- 3.2.4.3 It is proposed to adopt additional pension benefit arrangements for temporary allowances and emoluments to be pensionable on a time limited basis, at the fire and rescue authority's discretion, similar to those introduced in 2007 for Continued Professional Development.
- 3.2.4.4 The application of this option should apply a more restrictive definition of pensionable pay so that only basic annual pay for the role should be pensionable under "final salary" arrangements. The types of pay which would be treated as attracting additional pension benefit include:
- (a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighters' day to day role but are within the wider functions of the job;*

(b) the amount (if any) paid in respect of continual professional development;

(c) the difference between the firefighters' basic pay in their day to day role and any pay received whilst on temporary promotion or where he or she is temporarily required to undertake the duties of a higher role;

(d) any performance related payment.

Flexible duty allowance is also highlighted as a temporary allowance.

- 3.2.4.5 Transitional arrangements would apply so firefighters already in receipt of allowances would be protected, with the APB being applied to new cases only.
- 3.2.4.6 The protection arrangements are to be welcomed however it is contended that the flexible duty allowance is not a temporary allowance but an integral part of an individual's normal remuneration as it cannot be removed other than by a disciplinary sanction. An alternative could be to revisit which elements are pensionable pay and deem others completely non-pensionable, or even paid into something like an additional voluntary contribution scheme which is outside of the liability of the Authority and the pension scheme.
- 3.2.4.7 In terms of accounting arrangements, if the extra pension will not be a fund change and the Authority has to pay it in the same way as injury pensions it is unclear what happens to the contributions deducted. It would seem appropriate for the Authority to retain the contributions, accounting for them separately, rather than transfer to the fire pension fund which does not pay this particular benefit.
- 3.2.4.8 Regarding other temporary emoluments, this Authority always treated temporary promotion as pensionable therefore if this proposal was enacted the Authority would need to consider whether or not future temporary promotions would remain pensionable. There will therefore be an increased administrative burden and a potential cost increase to the Authority.
- 3.2.5 Exemption from payment of pension contributions – 30 years pensionable service before age 50 (Age Discrimination) an exemption from payment of employees' pension contributions between 30 years' service being achieved and the age of 50.**
- 3.2.5.1 Under the terms of the Firefighters' Pension Scheme, the earliest a member can retire is at age 50, having completed at least 25 years' service. The maximum pension entitlement that a Firefighters' Pension Scheme member can accrue is 30 years' service (i.e. 40/60ths).
- 3.2.5.2 Members of the Firefighters' Pension Scheme have alleged age discrimination as those members who joined before age 20 must pay pension contributions for over 30 years before having the option to retire aged 50. They are required to pay employee contributions without accruing any further pension entitlement and do not have any option to retire.
- 3.2.5.3 The proposal is to allow members under the age of 50 who have accrued 30 years' service to take a contributions holiday from the time they attain 30 years' reckonable service until they reach age 50. At this point, the member would then be able to choose between retirement with pension or continued employment and payment of contributions, or continued employment without

paying contributions and electing to defer their pension. Under this proposal, the employing authority would need to continue to make contributions.

- 3.2.5.4 The question of potential age discrimination arises as a result of the introduction of the Employment Equality (Age) Regulations 2006. The proposal is therefore to be applied retrospectively to 1 December 2006.
- 3.2.5.5 As the Firefighters' Pension Scheme is now closed to new members, the liability under this proposal is finite. The Government Actuary's Department has estimated that since 1 December 2006, about 350 members are affected and the cost of refunding their contributions would be £2.7m. In addition there are about 3,000 members who have the potential to accrue more than 30 years' service before age 50. The future cost of giving this group a contribution holiday will be approximately £16.5m. However, the Government intends to bring forward reforms to public sector pensions following Lord Hutton's review.
- 3.2.5.6 As this policy approach neutralises the effect of the current Scheme Rules which requires members to remain in the scheme and pay contributions without accruing any further pensionable service it can be supported. However Members are advised that there will be an increase in administration by virtue of this change.
- 3.2.6 Improve the efficiency of the medical appeals process by providing Independent Qualified Medical Practitioners and Boards of Medical Referees with the power to review previous decisions where further medical evidence is presented.**
- 3.2.6.1 Under the existing arrangements, if an Independent Qualified Medical Practitioner has provided an authority with an opinion in an ill-health case, they are unable to review that case should further medical evidence be identified. Where the member wishes to appeal the original decision, the full process of determination must be undertaken again, with a second, impartial Independent Qualified Medical Practitioner. There is no mechanism for a Board of Medical Referees to reconsider its opinion in light of new medical evidence.
- 3.2.6.2 To amend the procedures for the consideration of medical questions. The intention is to reduce instances where an appeal occurs unnecessarily. The proposals are:
- to allow Independent Qualified Medical Practitioners to review their opinion if further medical evidence is provided by the Scheme member so as to avoid unnecessary referrals to a Board of Medical Referees;
 - to provide for a member of the Board of Medical Referees to review medical papers when an appeal is received to ensure that there is a sufficiency of evidence to enable an appeal to be heard;
 - to allow the Board of Medical Referees to review its opinion if the appellant and fire and rescue authority are satisfied that the board has made an error of fact that materially affects its decision
- 3.2.6.3 Independent Qualified Medical Practitioners and the Board of Medical Referees are permitted to review their decisions if the parties agree. Such an instance may be where new evidence has arisen which justifies reconsideration.

3.2.6.4 This proposal is supported as it should reduce the need for appeals to decisions made by an Independent Qualified Medical Practitioner to the Board of Medical Referees, or from the Board to the High Court by way of Judicial Review. Such appeals do not provide a cost effective or quick solution and, in some instances, may not be necessary if Independent Qualified Medical Practitioners and the Board of Medical Referees are permitted to review their decisions if the parties agree. Such an instance may be where new evidence has arisen which justifies reconsideration.

3.2.7 To ensure that the appeal for a non-medical award claim, or payment, is undertaken through the appropriate mechanism (Pension Ombudsman rather than Crown Court)

3.2.7.1 If an authority does not admit a person's claim to an award or payment in respect of an award the Firefighters' Pension Scheme currently provides for appeal to the Crown Court. Alternative arrangements are now in place for internal dispute resolution arrangements and a subsequent process for appeal to the Pensions Ombudsman.

3.2.7.2 The proposal is to substitute the provision for appeal to the Crown Court if an authority does not admit a person's claim to an award or any payment in respect of an award, with the provision for appeal through the Pensions Ombudsman. This substitution is intended to ensure that the most appropriate mechanism for appeal is used and to provide a quicker resolution and is supported.

3.2.8 Withdrawal of pension during service as regular firefighter (abatement)

3.2.8.1 The purpose of a pension is to provide a member with regular income during retirement. Abatement is the process of reducing or stopping a member's pension if a member retires and then returns to work in the public sector. Government policy is that pension payments should be abated where a member is reemployed in the public sector and receives a pension and salary which exceeds their earnings before retirement. At present, the fire and rescue authorities only have the discretion to withdraw all or part of the pension of a Firefighters' Pension Scheme member employed as a regular firefighter, and the option is not frequently exercised.

3.2.8.2 The Department's proposal is to expand the definition of re-employment, so that abatement of pension may apply to a member re-employed in **any** role **by any** authority, including non-operational and retained firefighter roles. It is also proposed to require an authority that elects not to exercise the discretion to abate a member's pension, to pay the amount of pension paid to the member within the financial year into the pension fund.

3.2.8.3 This could reduce the overall cost to the Fund however it would be extremely difficult to monitor and control especially for individuals who were re-employed by another Authority entirely. This could also prove to be a disincentive to work (and pay tax), and directly contradicts Lord Hutton's recommendation to discontinue abatement. It is considered that the existing arrangements are appropriate.

3.2.9 Other amendments are to ensure the existing Order reflect the changes made as a result of this consultation and any statutory references mirror the current legislation.

3.3 UPDATE ON OTHER PROPOSED CHANGES TO PENSION SCHEMES

3.3.1 The second consultation relates to a proposal contained within the last Spending Review that public service pension schemes would be required to deliver annual savings of £2.8bn by 2014-15.

3.3.2 In his statement of 19 July, the Chief Secretary set out that, for 2012-13, the savings required would be £1.2bn. For the firefighters' pension schemes, this means 2012-13 savings of £13.2m. The Chief Secretary's statement also made it clear that the Government remains committed to securing the full overall savings of £2.3bn in 2013-14 and £2.8bn in 2014-15, as announced at Spending Review 2010. This requires each scheme to find savings equivalent to a 3.2 percentage point increase by 2014-15.

3.3.3 The Government also believes that, in line with proposals contained with the Hutton report on public sector pensions, any proposed increases in contributions rates should protect low earners and be progressive, so that high earners pay proportionally higher increases to reflect their more generous pensions. The Government also set out its preferred parameters for scheme design:

- There should be no increase in employee contributions for those earning less than £15,000;
- There should be no more than a 1.5 percentage point increase in total by 2014- 15 for those earning up to £21,000. This amounts to a 0.6 percentage point increase in 2012-13 on a pro-rata basis;
- High earners will pay more, but no more than 6 percentage points (before tax relief) by 2014-15. This amounts to a 2.4 percentage point cap in 2012-13 on a pro-rata basis

3.3.4 Consistent with these policy principles, the proposed employee contribution rates to apply from 1st April 2012 are:

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	11.6%	9.1%
More than £21,000 and up to an including £30,000	12.3%	9.1%
More than £30,000 and up to an including £40,000	12.4%	9.3%
More than £40,000 and up to an including £50,000	12.6%	9.7%

PREVENTING PROTECTING RESPONDING

More than £50,000 and up to an including £60,000	12.8%	9.5%
More than £60,000 and up to an including £100,000	13%	9.6%
More than £100,000 and up to an including £120,000	13.1%	9.7%
More than £120,00	13.3%	9.8%

3.4 The Government has invited views on these proposals and, in particular, asks five questions relevant to the consultation, each of which is considered below:

- *Do the proposed tiered contributions meet the objectives set out by Government in the Spending Review?*

The proposed tiered contributions do meet the objectives set out by Government. Unfortunately, the methodology adopted by the Government, i.e. an across the board rise in contributions, does not recognise the fact that the Firefighters' Pension Scheme already has one of the highest contribution rates in the public sector (the New Firefighters' Pension Scheme rates are also high when compared to other schemes). There must, therefore be a concern that if such a rise were introduced it would have the effect of causing a significant number of employees to withdraw from the pension schemes thereby reducing the overall amount the Treasury could expect to raise rather than increasing it as the proposals suggest.

- *Are there any consequences of the proposed contribution tiers that you consider have not been addressed?*

The tiers as proposed are based upon simple salary bands which do not align with the current rank structure detailed within the Terms and Conditions of Employment (Grey Book). This will not only increase the administration of the Schemes but could also mean that persons of equal rank could be paying a different contribution rate which does not seem to treat employees equally.

The proposals may affect promotions as employees may be reluctant to move beyond the role of Watch Manager as the pension increase has a greater impact at Station Manager level and above. Indeed higher management roles may be significantly compromised by these proposals.

The drop-out rate from the scheme as a consequence of proposed increase in contributions has been estimated at 1% whereby anecdotal evidence suggests this would be much higher than this and potentially create a deficit in the scheme.

- *Do you consider that there are equality issues that will result in any individual groups being disproportionately affected by the proposed contribution tiers? If so, what do you consider to be the nature and scale of that disproportionate effect?*

Age – Certain age groups may be disproportionately affected- older workers, working longer in order to receive their pension, but also some in the younger bracket of around 30 years old - those who joined the old scheme just before the new scheme came into operation and will pay more across their career

- *Is there a tariff which you think will help to further minimise any opt outs from the firefighters' pensions' schemes?*
- A standard 3.2% increase across all local government pension schemes is an overly simplified proposal to what is an extremely complicated question. There must be some recognition of the high contribution rates already in place in the firefighters' pension schemes and this must be reflected in revised proposals.
- It is also considered that a 1% opt out rate is not realistic and anything above that will reduce the income perhaps to a position that negates the change in the first place. A fair way of to achieve savings would be to base the rises on existing contribution rates so that those paying less than 11% now, would in fact be shouldering more of the burden. This methodology, although resulting in some increase in the contribution rates of firefighter schemes, would be more acceptable to firefighters rather than the crude and simplistic way the proposals are currently formed.
- *Is the treatment under the proposals of part time workers and retained firefighters clear?*

The proposals in relation to part time and retained firefighters are clear.

3.5 CONCLUSION

- 3.5.1 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.
- 3.5.2 As this paper sets out, there are a number of proposed changes that can be supported by the Authority. In particular the proposals contained with the first consultation would help to provide a more robust and effective scheme for the future.
- 3.5.3 However changes to pensionable pay, abatement rules and especially proposed increases in contribution are very sensitive issues. To this end it is considered essential that the government, through a process of exhaustive and meaningful consultation, seeks to find a mutually acceptable solution with regard to this issue.

4 RISK MANAGEMENT

- 4.1 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.

5 FINANCIAL IMPLICATIONS

- 5.1 All financial implications are included within the body of this report however Members should note that if all the proposals are enacted there could well be an increase in contributions by this Authority which cannot yet be determined.

6 EQUALITY AND FAIRNESS IMPLICATIONS

- 6.1 There are equality and fairness implications should the proposal on a 'pensions holiday' not be accepted as this could be determined as indirect discrimination on the grounds of age.

7 HEALTH AND SAFETY IMPLICATIONS

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

8 RECOMMENDATIONS

- 8.1 Members are recommended to:
- a) Consider the content of this report;
 - b) Approve that the Chief Fire Officer submits a response to the consultation in line with the comments contained in this report;
 - c) Receive further reports as appropriate.

BACKGROUND PAPERS

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

- Amendments to the Firefighters' Pension Scheme 1992 and the New Firefighters' Pension Scheme 2006: Consultation – 3rd August 2011

