

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

Item No. 9

HUMAN RESOURCES COMMITTEE: 14 JULY 2014

**SUBJECT: CONSULTATIONS ON THE REGULATIONS TO INTRODUCE A NEW
FIREFIGHTERS' PENSION SCHEME FROM APRIL 2015**

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

1 PURPOSE OF REPORT

- 1.1 The purpose of this report is to inform members on draft consultations for the new Firefighters' Pension Scheme to come into force on 1st April 2015 and also proposes a response for consideration by Members on the May 2014 consultation document.

2 BACKGROUND

- 2.1 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.
- 2.2 On 23 May 2012, a Proposed Final Agreement was published on the scheme design for the Firefighters' Pension Scheme in England to be introduced from April 2015 ("the 2015 scheme").
- 2.3 The first period of statutory consultation took place between 18 December 2013 and 12 March 2014. Details of the consultation, including the Authority's response, are contained in section 4.
- 2.4 The second period of statutory consultation commenced on 23 May 2014 and responses are required by 4 July 2014. Details are contained in sections 5 and 6. The Authority's response is set out in paragraph 6.7.

3. OVERALL PENSION SCHEME DESIGN

3.1 The main elements of the scheme design were set out in the Proposed Final Agreement and are outlined below:

- A pension scheme based on career average revalued earnings.
- An accrual rate of 1/58.7ths of pensionable earnings each year.
- There will be no cap on how much pension can be accrued.
- A revaluation rate of active members' benefits in line with average weekly earnings.
- Pensions in payment and deferred benefits to increase in line with the Prices Index (currently the Consumer Prices Index).
- Flexible retirement from the scheme's minimum pension age of 55 built around the scheme's Normal Pension Age of 60, with members being able to take their 2015 scheme benefits as follows:
 - for all active members who are aged 57 or more at retirement, 2015 scheme benefits taken before Normal Pension Age will be actuarially reduced with reference to the 2015 scheme's Normal Pension Age, rather than the deferred pension age.
 - all other members will have their 2015 scheme benefits actuarially reduced on a cost neutral basis from the scheme's deferred pension age.
- Authority initiated early retirement for members of the 2015 scheme from age 55 to be in accordance with the arrangements set out in Part 3, Rule 6 of the New Firefighters' Pension Scheme 2006.
- Late retirement factors for members retiring from active service to be actuarially neutral from the Normal Pension Age.
- A deferred pension age equal to the individual's State Pension Age.
- Optional lump sum by commutation at a rate of £12 for every £1 per annum of pension foregone in accordance with HMRC limits and regulations.
- Ill-health retirement benefits to be based on those contained in the New Firefighters' Pension Scheme 2006.

- All other ancillary benefits to be based on those contained in the New Firefighters' Pension Scheme 2006.
- Members rejoining after a period of deferment of less than five years can link new service with previous service, as if they had always been an active member.
- Members transferring between public service schemes would be treated as having continuous active service.

There will be transitional protection in respect of:

- All accrued rights are protected and those past benefits will be linked to final salary when members leave the Firefighters' Pension Scheme 2015.
- All active members who, as of 1 April 2012, have 10 years or less to their current Normal Pension Age will see no change in when they can retire, nor any decrease in the amount of pension they receive at the current Normal Pension Age. This means members will remain in their existing schemes and not transfer to the Firefighters' Pension Scheme 2015.
- There will be a further 4 years of tapered protection for scheme members. This means that members who are up to 14 years from their current Normal Pension Age, as of 1 April 2012, will have limited protection so that on average for every month of age they are beyond 10 years of their Normal Pension Age, they gain about 53 days of protection, before they transfer to the Firefighters' Pension Scheme 2015.

4 FIRST CONSULTATION

4.1 The broad content of the consultation document is outlined below.

4.2 **Section 1** - Introduction, and **Section 2** - Policy Context provides a background to the consultation and sets out the rationale for pension scheme reform.

4.3 **Section 2** also outlines the pension scheme design, including the transitional protection arrangements.

4.4 **Section 3** sets out the timing and related proposals. The consultation advises that DCLG is planning to hold further separate consultations on other aspects of the 2015 scheme design during 2014 which will cover the areas listed below:

- Valuations, employer contribution rates and the employer cost cap
- Employee contributions in the Firefighters Pension Scheme 2015

- Finance
- Public Service Transfer Club
- Transitional arrangements
- Governance
- Record keeping

4.5 **Section 4** sets out the draft regulations and provides information on the purpose of each regulation.

4.6 **Section 5** of the consultation outlines the next steps and seeks views on the following consultation questions, each of which is considered below:

Tyne and Wear Fire and Rescue Authority (TWFRA) welcome the opportunity to respond to the consultation on the Regulations to introduce a new Firefighters Pension Scheme 2015.

In general, TWFRA is disappointed that the consultation is not absolutely clear regarding the operation of a statutory scheme intended to be implemented in just over 12 months from the close of the consultation. It appears that a number of incomplete consultations will inform decision making regarding the wider scheme. This approach can only lead to the full impact of the scheme being misunderstood.

In relation to the definitions of Pensionable Pay, TWFRA are conscious of the current confusion surrounding the interpretation of the previous two fire pension schemes legislation. For example, payments that are viewed as temporary by the DCLG are not necessary seen as temporary by high court rulings.

As such, we ask whether it may be prudent to look at the definition of Pensionable Pay in regulation 17(a) to clarify that both temporary and **ad-hoc** payments be defined as non-pensionable. Additionally, would it be more prudent for the legislation to be more specific in the treatment of payments such as % enhancements to pay for working varying duty systems?

TWFRA are also curious in relation to the rationale behind the “Assumed Pensionable Pay.” While the costs associated with APP may be minimal, we are unaware of the need to create this financial burden on the employer.

As noted there are additional consultations to be completed in reference to the 2015 scheme most notably the employer contribution rates and employer cost cap. It is understandable that TWFRA are unable to offer any meaningful feedback on the scheme as a whole until it is aware of the associated contribution rates.

Question 1

Do the draft regulations meet the design parameters of the Firefighters Pension Scheme 2015 as set out in the Proposed Final Agreement published on 24 May 2012?

Yes

Question 2

Do the benefits in the draft regulations sufficiently match those in the New Firefighters Pension Scheme 2006, with sufficient adaptations for a career average revaluation earnings arrangement?

Broadly speaking yes, however at a more fundamental level the introduction of the new regulations would be the ideal opportunity to see a more unified approach to a definition of pensionable pay which is in line with recent high court rulings rather than at the whim of individual employers.

Question 3

Are the ill-health retirement benefits and other ancillary benefits in the Firefighters Pension Scheme 2015 sufficiently based on the benefits currently contained in the New Firefighters Pension Scheme 2006?

Yes

Question 4

Are the benefits for part time, retained and volunteer firefighters in line with the benefits for these firefighters as contained in the New Firefighters Pension Scheme 2006.

TWFRA is of the view that the pension situation with such workers remains unclear and the consultation does not fully address how such workers will be treated for the purposes of the 2015 scheme.

Question 5

Can you foresee any administrative challenges with the draft regulations?

The draft regulations will be administratively challenging with the 2 tier calculation and tapered commutation for 1992 scheme members and depending on the outcome of future consultations may cause ICT issues associated with its implementation, it would perhaps be useful if CLG liaise

closely with the major HR and Payroll software providers. Pension Fund Administrators and HR practitioners would greatly appreciate clear and concise guidance from CLG when the new scheme is finalised and get away from the concept that FRAs should seek their own legal advice on contentious issues as is usually the case currently.

Question 6

Do you consider that there are any equality issues which the Department hasn't considered in the published Equality Statement which will result in individual

groups being disproportionately affected by the reforms? If so what do you consider to be the nature and scale of that disproportionate effect?

TWFRA would need more detail with respect to the operation of the scheme in order to comment in detail regarding equality impact, particularly in relation to age.

This requirement for more detail is particularly important where costs are assumed to be 'neutral'. TWFRA would not accept any cost should this neutrality be a premise to the scheme it is built upon.

Also, although this will not affect the 2015 scheme, the 1992 scheme covers all groups except partnerships, is this a good opportunity to redress this situation?

5 SECOND PERIOD OF STATUTORY CONSULTATION ON THE NEW FIREFIGHTERS' PENSION SCHEME

5.1 This consultation seeks responses from interested parties on the draft regulations for the new Firefighters' Pension Scheme to come into force on 1 April 2015 and also views on the employee contribution rates to apply in the new scheme.

5.2 In particular, the consultation covers:

- a more detailed set of draft regulations to the earlier consultation which commenced on 18 December 2013 and covered membership and the benefits structure in the new scheme. A copy of the previous consultation can be found at:

<https://www.gov.uk/government/consultations/firefighters-pension-scheme-from-april-2015>

6 CONSULTATION DOCUMENT

- 6.1 The broad content of the consultation document is outlined below.
- 6.2 **Section 1** - Introduction, and **Section 2** - Policy Context provides a background to the consultation and sets out the rationale for pension scheme reform.
- 6.3 **Section 2** also outlines the pension scheme design, including the transitional protection arrangements.
- 6.4 **Section 3** sets out the timing and related proposals. The consultation advises that DCLG is planning to hold further separate consultations on other aspects of the 2015 scheme design during 2014 which will cover the areas listed below:
- Transitional arrangements
 - Governance
- 6.5 **Section 4** sets out the outcome of the previous statutory consultation and the proposals for consultation including the key changes made to the regulations that were previously consulted and are listed below:

Responses

- Twenty seven written responses were received to the first statutory consultation which ran from 18 December 2013 to 12 March 2014. In addition, the Department met with the Firefighters Pension Scheme Technical Working Group and key employer and employee representatives during the consultation period to discuss the regulations and consider any representations made.
- The responses received to the first consultation exercise have been considered in preparing the set of draft regulations highlighted below and changes have been made.
- A short summary of the written responses to the first consultation is set out below. However, given that the membership and benefit regulations are again being consulted on, the intention is to publish one document covering a summary of all written responses to both the first and second consultations, and the Government's response.
- Nineteen respondents stated that the initial reading of the first set of regulations that were consulted on met the design for the Firefighters' Pension Scheme 2015 as set out in the Proposed Final Agreement. Two employee representatives (trade unions) highlighted that the terms of the Proposed Final Agreement had not been agreed, or that the proposals were not workable or

sustainable. One further employee representative highlighted that, by having a Normal Pension Age of 60, there was a need to ensure that the correct level of support was provided to operational staff, especially those retained firefighters.

- One employee representative stated that discussions were still on-going regarding the pension scheme design and that their response was therefore an initial response, and could therefore change subject to any potential changes to the scheme design.
- A number of the nineteen respondents and some other responses received said that it was difficult to provide an overall assessment, or comment, on whether the full terms of the Proposed Final Agreement had been met, without being sighted on the full set of regulations covering the employee contributions, funding, valuation, governance and transitional arrangements. These respondents stated that it would have been more helpful if the Department had consulted on one full set of regulations rather than through a staged approach.
- Twenty respondents said that the proposals in the regulations, where it had been determined that they should, were sufficiently based on the current benefits in the New Firefighters' Pension Scheme 2006, although a couple of respondents welcomed clarification regarding pensionable pay arrangements.
- Twenty two respondents said the proposed ill health benefits were in line with existing arrangements for 2006 scheme members.
- Regarding part time and retained firefighters, fifteen respondents felt that the regulations were clear as to how these groups were to be treated under the arrangements for the 2015 scheme. However, some respondents said they would welcome further clarity on this issue although they did not specify what areas should be clarified.
- Nineteen respondents felt that there would be administrative challenges with the new scheme. These included the administration of the two pot approach for those members who transferred from the existing firefighters pension scheme to the reformed scheme; costs associated with the administration of the scheme; the training for pension administrators and for members of the new pension boards; and the timescales for implementation of the new scheme which would be dependant on the final regulations being made.

- In terms of the Equality Statement that was published alongside the consultation, thirteen respondents said that they felt that the statement covered all the equality issues and that there were not any further to be addressed. Others raised concerns on the Normal Pension Age of 60 and the impact this would have on females, and that there needed to be further consideration of part-time working and those firefighters who undertook multiple periods of maternity leave.
- In further response to the question as to whether there were any equality issues that needed to be considered that were not contained within the published equality statement, four fire and rescue authorities took the opportunity to acknowledge that the reformed scheme provided increased

flexibility for individuals to retire prior to the Normal Pension Age. However, these authorities set out that if any actuarial reduction around this was not to be cost neutral, then further clarification would be needed as to who would bear any financial liability in regard to this matter.

Initial Government response

- A full Government response covering points raised to the previous, and this second, consultation will be published in due course.
- The Government is mindful that fire and rescue authorities need time to implement the terms of the Firefighters' Pension Scheme 2015. This second consultation builds on the regulations that were part of the first consultation and now includes regulatory consultation on funding, valuation, and public sector transfer club arrangements.
- The Department's view was that it was preferable to begin the consultation process as early as possible even if the consultation focused on the membership and benefits in the reformed scheme. The Department is continuing to engage with key stakeholders and the main software providers on the proposals for the Governance and transitional arrangements, prior to the regulatory consultation on these issues. The Department has noted the initial comments from some respondents that the proposed transitional protections should be extended. However, a greater proportion of firefighters are protected from the changes than any other large workforce and the Government does not intend to extend this further.
- Retained, part-time and volunteer firefighters will accrue pension benefits at a rate of 1/58.7th of their pensionable earnings. Similarly, regular firefighters will accrue pension benefits on the same rate based on their pensionable earnings. Where a retained or volunteer firefighter's pension will be based on their

assumed pensionable pay, then the regulations make provision for a retained or volunteer firefighter's daily rate to be calculated and then this rate is applied to each day that the period of "assumed pensionable pay" applies.

- There will always be some challenges in implementing changes to a pension scheme and the Department has engaged fully with scheme administrators both before and during the consultation process to identify those challenges and mitigate them where appropriate. This period of engagement will continue over the coming months as fire and rescue authorities prepare for implementation of the 2015 scheme. Neither the previous, nor this, consultation makes provision in relation to pension boards or the requirement for them to be suitably trained. Discussions on the training requirements for pension boards are taking place with employee and employer representatives

and will be the subject of a separate consultation on governance for the Firefighters' Pension Schemes.

- In terms of the comments received on equality issues, the originally published Equality Statement has been updated and the revised version has now been published alongside this second consultation.

Proposals for consultation

The draft regulations form part of this consultation.

- Employer Contributions – Part 8, Chapter 3
- Firefighters' Pension Fund – Part 9
- Public Service Transfer Club – Part 4 (Pension Accounts) and Part 10 (Transfers)
- Actuarial valuations and the employer cost cap – Part 11
- Key changes made to the regulations
- Interpretation (regulation 3)
- Pensionable Service (Chapter 2 of Part 3)
- Pensionable Pay (regulation 18)
- Descriptions of pension (regulation 23)
- Calculation of "retirement PIA index adjustment (regulation 26)
- Determination of "the age addition" (regulation 27)
- Amount of pension for a scheme year (regulation 35)
- Establishment of added pension account (regulation 39)
- Closure of deferred member's account on re-entering pensionable service (regulation 48)
- Qualifying Service (regulation 55)
- Entitlement to full retirement pension (members aged at least 55) (regulation 56)

- Exercise of partial retirement option (members aged at least 55) (regulation 60)
- Annual rate of ill-health awards (regulation 63)
- Commencement of pensions (regulation 67)
- Meaning of surviving partner (regulation 74)
- Bereavement pension: surviving partner/eligible child (regulations 79 and 89):
- Lump sum payable on death of active member (regulation 93)
- Lump sum payable on death in certain circumstances (regulation 95)
- Member leaves all pensionable service before qualifying for retirement benefits (regulation 112)
- Member opts out after automatic re-enrolment date (regulation 113)
- Transfers (Part 10)
- Guaranteed minimum pension (regulation 168)
- Payments for added pension (Schedule 1)
- Transitional provisions Transitional provisions (Schedule 2)

6.6 **Section 5** of the consultation sets out the Governments proposals for employee contribution tariffs for the Firefighters' Pension Scheme 2015 as follows:

Contribution rates

The table below sets out the Government's proposals for employee contribution rates to apply in the first four years of the 2015 scheme.

As a significant proportion of firefighters will continue to remain members of the Firefighters' Pension Scheme 1992, with the contribution rate payable by a firefighter earning approximately £29,000 being 14.2%, then the rate required in the Firefighters' Pension Scheme 2015 over the first four years of the scheme is lower than the average of 13.2%. However, in the long term the average 13.2% will need to be delivered in the Firefighters' Pension Scheme 2015.

2015-16

£0 and up to £27,000
Over £27,000 and up to £50,000
Over £50,000 and up to £142,500
Over £142,500

Employee contribution rate payable

10.0%
12.2%
13.5%
14.5%

2016-17

£0 and up to £27,270
Over £27,270 and up to £50,500
Over £50,500 and up to £142,500
Over £142,500

Employee contribution rate payable

10.0%
12.5%
13.5%
14.5%

2017-18

£0 and up to £27,543
Over £27,543 and up to £51,005
Over £51,005 and up to £142,500
Over £142,500

Employee contribution rate payable

10.5%
12.7%
13.5%
14.5%

2018-19

£0 and up to £27,818
Over £27,818 and up to £51,515
Over £51,515 and up to £142,500
Over £142,500

Employee contribution rate payable

11.0%
12.9%
13.5%
14.5%

- 6.7 **Section 6** of the consultation document outlines the next steps and seeks views on the following consultation questions, each of which is considered below:

Question 1

Do the revised draft regulations continue to meet the design parameters of the Firefighters' Pension Scheme 2015 as set out in the Proposed Final Agreement published on 24 May 2012?

What has been released thus far is sufficiently reconcilable to the Final Agreement published on 24 May 2012.

Question 2

Do the benefits (including the ill-health retirement benefits and other ancillary benefits) in the draft regulations sufficiently match those in the New Firefighters' Pension Scheme 2006, with sufficient adaptations for a career average revaluation earnings arrangement?

Yes, the benefits in the 2015 scheme appear to match the 2006 scheme with the notable exceptions to the changes to a Career Average Scheme and the deferred pension age being linked to State Pension Age as opposed to fixed at 65.

Question 3

Do the proposals for the employer additional contributions for ill health awards and the employer additional contributions for a member who has been "employer initiated retired" sufficiently match the existing arrangements in the New Firefighters' Pension Scheme 2006?

Yes, the proposals for employer additional contributions for both ill health awards and employer initiated retirements appear to sufficiently match the existing arrangements in the New Firefighters' Pension Scheme 2006.

Question 4

Do the proposals for the arrangements for the Firefighters' Pension Fund sufficiently match those in the New Firefighters' Pension Scheme 2006?

Yes, Part 9 of Firefighters Pension Scheme 2015 appears to sufficiently mirror Part 13 of the Firefighters Pension Scheme 2006.

Question 5

Can you foresee any challenges with the proposals for the procedure for ensuring the cost of the scheme is returned to the level of the cost cap as set out at regulation 152?

In the event that the cost cap of the scheme falls beyond the percentage stated in Treasury regulations the procedure in Regulation 152 appears to be suitable.

We are aware that consultation regarding Scheme Advisory Boards (SAB) has yet to be undertaken. However, upon completion of that consultation it would be useful to understand what level of agreement is required for changes to be actioned on, i.e. Unanimous vote or majority?

Further to this, in paragraph 9 of rule 152 it appears that Pension Managers will need to agree the changes. Again, what level of agreement is needed for the changes to be actioned on, unanimous vote or majority?

While it is noted within Paragraph 4 of regulation 152 that the SAB may have the 6 month deadline extended by the Secretary of State. Can the regulations specify the circumstances the Secretary of State may approve or decline such a request?

Question 6

Do you have any comments on:

- The proposals that employee contribution rates in the 2015 scheme are based on a member's full time equivalent pay?

It is noted that the 2015 scheme will use Full Time Equivalents as opposed to Actual Earnings. The reasoning for this being the possible future make up of Fire and Rescue Services being made up of Retained and Part Time workers.

The Local Government Pension scheme which moved to a Career Average scheme in 2014 made the opposite decision and changed to Actual Earnings as opposed to Full Time Equivalents. The logic of this being a part time worker is not accruing the same pension benefit and thus should not be making the same contribution rates. It was also seen as protection for lower paid employees. By basing contribution rates on Full Time Equivalents will this not create barriers for retained and part time workers joining the pension scheme.

- *The proposals for there to be four tiered bands, with some protection for new entrants?*
- *The level of the tiered bands to be set each year between 2015-16 to 2018-19 as shown in the tables in Section 5?*

As the majority of NFPS members are relatively new in their careers they are predominantly in the early stage of career progression, i.e. Firefighter to Crew Manager. This means the majority of NFPS members who are transferred to the 2015 scheme will see a contribution increase.

As the 2015 scheme is less beneficial to the 2006 scheme and coupled with an increase in contributions there is a realistic weariness to the level of opt outs. The FRA recognises there is no empirical evidence to confirm high opt out rates based on increase in contribution rates, however the exercises conducted in the past have only looked at the increase of contribution rates and not included the additional factor of moving on to a lesser scheme.

Question 7

Do you consider that there are any further equality issues, which the Department hasn't considered in the published revised Equality Statement which will result in individual groups being disproportionately affected by the reforms? If so, what do you consider to be the nature and scale of that disproportionate effect?

As data on gender and age is all that is available, we are unable to evaluate any potential adverse or positive direct or indirect impact upon groups with other protected characteristics. As the regulations are still in draft format, it is not possible to make a detailed equality assessment about the direct or indirect impacts upon firefighters of varying ages. Reference is made to the flexible retirement options (i.e. from age 55) being actuarially neutral for the scheme and the member. Since there is the possibility this will not be the case in the finally agreed scheme, we are in the opinion that Fire Authorities should not be held financially liable for the difference.

7 RISK MANAGEMENT

- 7.1 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 medium 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.

8 FINANCIAL IMPLICATIONS

- 8.1 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.

9 EQUALITY AND FAIRNESS IMPLICATIONS

- 9.1 The equality and fairness implications are included within the body of this report.

10 HEALTH AND SAFETY IMPLICATIONS

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

11 RECOMMENDATIONS

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

BACKGROUND PAPERS

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

- Consultation on the regulations to introduce a new Firefighters' Pension Scheme from April 2015. December 2013 and May 2014 consultations.

