

report

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REPORT OF THE CHIEF FIRE OFFICER

CONSULTATION ON THE GOVERNMENT'S PROPOSALS FOR CHANGES TO THE FIREFIGHTERS PENSION SCHEME

1. PURPOSE OF REPORT

This report is produced to inform Members of the proposals recently put forward by the Office of the Deputy Prime Minister (ODPM) in relation to the provision of pensions for firefighters. The Government are consulting Fire and Rescue Authorities on their proposals and this report also seeks the approval of Members to a proposed response to this consultation.

2. BACKGROUND

- 2.1 On 13 October 2004 the ODPM released Fire Service Circular 44/2004 which seeks to consult Fire Authorities and other stakeholders on two major issues in respect of Fire Services Pensions. The first is a set of proposals for changes to the existing firefighters pension scheme and the second is a proposed new scheme for firefighters pensions.
- 2.2 Members will be aware of the Government's general concern at the cost of public sector pensions and the particular problems that exist with the funding arrangements for the firefighters scheme. The continued escalation of pensions deficits faced by Fire Authorities cannot be sustained in the longer term and the volatility of the demands on Authorities' revenue budgets makes any meaningful planning very difficult.
- 2.3 The consultation documents point out that the firefighters pension scheme is the most expensive of all public sector schemes, costing up to 37% of pensionable pay, and clearly one of the major drivers of this paper is to reduce these costs.
- 2.4 The Government also make reference to recent changes in the taxation regime which affect the provision of pensions, but it is perhaps a little odd that the Government use legislative change, which they are responsible for, as a reason to be compelled to make changes in the firefighters pension scheme.
- 2.5 This report deals with each of the consultation documents in turn, considering the proposed changes to the existing scheme first. Suggested comments of the Fire Authority in relation to the existing scheme are shown in bold italics whilst those relating to the proposed new scheme are appended as Appendix A to this report.

3. PROPOSED CHANGES TO THE EXISTING SCHEME

3.1 Under current arrangements a firefighter who has reached the age of 50 and has 25 years service may retire and receive a pension which is not actuarially reduced to reflect the early payment of pension benefits. Similarly a firefighter who has reached the age of 50 and has 30 years service may retire on a full pension. The first proposal is that this minimum pension age should be raised from 50 to 55 years of age. This will apply from 1 April 2006, however there is an exemption for anyone would have retired before 1 April 2013 under existing arrangements.

3.2 The second proposal is that the age at which deferred benefits will be payable is to be raised from 60 to 65 years of age. Deferred benefits apply when an individual leaves the Service and opts to "freeze" their pension benefits in the scheme for payment at some future time. The proposal will only cover service from 1 April 2006 and all benefits accrued up to that point will be payable at age 60 as at present.

3.3 The Government invite comments on these changes and proposed comments are as follows :

The raising of the minimum pension age to 55 is not supported as this will inevitably result in an increase in applications for early retirement on the grounds of ill health. There will inevitably also be issues around fitness which whilst not directly related to ill-health may cause a firefighter to be unfit to continue in work.

The age at which deferred benefits are payable will have a reduced effect on serving firefighters and will instead bring the deferred benefit arrangements in to line with other schemes. However, this will be seen as a significant variation in the terms under which firefighters initially joined the scheme.

The proposal to exempt those who are due to retire before 1 April 2013 is generally supported. Having a cut off date such as this however, will disadvantage staff who may have been due to retire shortly after this date. A way of phasing this in over a longer period should be sought.

3.4 There are then proposals to change arrangements for compulsory retirement ages and ill-health retirements. In respect of compulsory retirement ages the paper is unclear however, on the matter of ill-health retirements the proposals are the same as those for the new scheme, which are that there should be two levels of payment.

3.5 Currently a firefighter who is disabled or falls ill so as to be unable to continue in service will receive a pension which will be enhanced depending upon length of service and subject to the final sum being no greater than 40/60 of pensionable pay. The new proposals are that a firefighter who is unable to continue in the Service, but who may be fit enough to gain employment elsewhere will receive an unenhanced pension, whereas someone who cannot seek alternative employment will be able to access a series of enhancements similar to those available at present.

Again this represents a significant reduction in the benefits provided by the scheme and may be fraught with difficulty. Provision will need to be made for those individuals whose condition deteriorates after retirement to the point where they can no longer take up alternative employment and also for those

whose condition improves to the point where they can. This seem to be an area with significant opportunity for disputes particularly around the margins.

- 3.6 There is a further proposal to change the way in which pension rights accrue. Currently pension rights accrue at the rate of 1/60 of pensionable pay for the first 20 years of service and then a 2/60 for every subsequent year, giving 40/80 on retirement. The Government consider that this provides a perverse incentive for staff to seek ill-health retirements at the optimum point in their service. They propose instead that service should accrue in equal 1/60s throughout all service.

This paragraph implies that the majority of ill-health retirements are in some way contrived to maximise pension benefits, a point which statistics may suggest, but which is difficult to prove. What is missing here in respect of accruals is that the present accrual rate allows for a full pension to be achieved after 30 years of service and incentivises more experienced staff to stay in the service. It is only by extending the retirement age that an equalised accrual becomes possible and whilst equalised accrual is supported in principle it should not be achieved solely by extending service.

4. PROPOSED NEW FIREFIGHTERS PENSION SCHEME

The proposal for a wholly new pension scheme for firefighters is, as might be expected, a complex and lengthy document and all the implications of the scheme are not listed here. A draft response to each of the points upon which Government invite consultation, plus some other relevant comments, is attached as Appendix A to this report.

5. FINANCIAL IMPLICATIONS

The financial implications arising from these proposals are likely to be significant for a number of reasons, namely :

- i) Proposals to raise the pensionable age will bring about a short term reduction in training costs and costs relating to the provision of initially issued equipment and uniforms. This would be a short term reduction. If it is proposed however, that firefighters who are unfit for operational duties will be retained in non-operational roles, this would also bring about a reduction in the issue of Personal Protective Equipment.
- ii) The cost of dealing with appeals under these proposals could be significant. There are many proposals which may give rise to individual appeals.
- iii) The costs of dealing with equal pay claims and inflating the salaries of non-uniformed posts could be significant.
- iv) Whilst it is undoubtedly true that the financing of the firefighters pension scheme from central Government sources will be beneficial, the range of costs left with Fire Authorities in respect of ill-health and injury payments will do little to remove volatility from revenue budgets. This situation is worsened with the raising of the pensions age which will make such awards more prevalent.
- v) The extent to which FSS and therefore grant will be reduced to take account of these changes is presently unknown, however past experience shows that the position is unlikely to be cost neutral.

6. RISK MANAGEMENT IMPLICATIONS

The risk management implications of this report derive from two areas. Firstly, the finance risk of FSS being withdrawn disproportionately to actual spend on pensions and the Authority being left holding all the residual risk of ill-health retirements and injury benefits. Secondly, there is an issue of operational risk which may increase as a result of firefighters being much older than they are at present. This may change some of the Service's risk assessments.

7. PERSONNEL IMPLICATIONS

The implications for personnel within this report are significant both from a management perspective and from the perspective of staff in general. This represents a significant change to the firefighters pension provisions and will open up a wide range of potential appeals. These will have to be managed, but will undoubtedly place a strain on the recovering industrial relations situation in Nottinghamshire.

8. EQUAL OPPORTUNITIES IMPLICATIONS

There are no equal opportunities implications arising from this report.

9. RECOMMENDATIONS

That Members approve the draft response to the Government's consultation document regarding the firefighters pension scheme.

Paul Woods
CHIEF FIRE OFFICER

DRAFT RESPONSE TO THE PROPOSALS FOR A NEW FIRE FIGHTERS PENSION SCHEME

The following points are the issues upon which the Fire Authority have been asked to comment as part of the consultation document on the proposed new pension scheme for fire fighters

Issue 1 – the existing Firefighters' Pension Scheme should be closed to new members once the new scheme has been finalised and no later than 1 April 2006 and new entrants to the Fire and Rescue Service should join the new pension scheme from that date (paragraphs 1.2 and 4.1 – 2).

If it is accepted that firefighters would then have two different pension schemes in operation then this approach is supported.

Issue 2 – membership should be limited to firefighters, whatever duty system they work (regular or retained) (paragraphs 2.1 – 2).

The inclusion of retained and part time firefighters is supported. It is however perhaps worth considering that in keeping with the thematic review on equalities, an opportunity exists for all employees of the Fire and Rescue Services to be allowed admittance to the scheme. This is made possible by the firefighters scheme more closely matching the Local Government Pension Scheme both in terms of benefits and contributions.

Issue 3 – there should be no compulsory retirement age (paragraphs 2.4 - 5).

Again this proposal is broadly welcomed, however it must be recognised that this will place an additional burden on management in determining whether an individual needs to be retired from the Service on grounds of fitness or lack of competence.

Issue 4 – the normal pension age: there are arguments for age 65, although we need to be satisfied that the roles which firefighters may be expected to carry out in the future will allow significant numbers of members to continue working to that age. The other possibility is age 60 (paragraphs 2.6 – 11). The deferred pension age should be age 65 (paragraph 2.12).

It is difficult to see how this might work in practice. Increasingly many fire safety and community safety roles are being carried out by non-uniformed personnel, and whilst it is of course possible for these to also be carried out by uniformed personnel, the differential in pay scales would open up a large area for appeals and equal pay claims. If this approach is to be pursued then the 60 year point would be preferable as this would require less redeployment of staff.

Issue 5 – there should be single accrual. There is a range of options, the main ones being a pension based on 60ths with optional commutation or a pension based on 80ths with a fixed lump sum of 3 or 4 x pension (paragraphs 2.13 – 18).

The most reasonable option would seem to be the fixed lump sum option with equal 1/80 accruals as this removes any barrier to service continuing beyond the optimal commutation point. This option would disadvantage female firefighters who currently enjoy higher commutations, however it would probably be seen as a fairer approach.

Issue 6 – for those who accrue maximum service (40 years) before normal pension age, the excess service should accrue for pension purposes and for those who work beyond normal pension age the additional service should be allowed to accrue for pension purposes (paragraphs 2.13 – 18).

This is the fairest approach however it should be possible for an individual to opt to freeze their pension at this point and cease to make further contributions if they wish.

Issue 7 – pensionable pay should be defined by reference to core pay and possibly other permanent emoluments (paragraphs 2.19 – 22).

This is a difficult question in that the definition of other permanent emoluments requires further detail. Clearly all permanent pay should be pensionable and optional additions such as overtime should not. There are concerns around the assertion that retaining fees should not be included as pensionable pay “as it is clearly not pay”. It is considered that in fact the issue of whether this constitutes pay or not is far from clear and would certainly be open to legal challenge. The spirit of including retained employees in the scheme would tend to suggest that retaining fees should be included as pensionable pay, as it is a certain part of their monthly payment and constitutes earnings for tax purposes. There are arguments around bounty payments however, where the issue is less clear, although this would of course affect any career earnings calculations.

Issue 8 – the scheme should incorporate measures to mitigate adverse effects on the pension benefits built up by a member who moves from operational to non-operational duties or who steps down from a more senior role. Should firefighters’ pensions be based on career average earnings (paragraph 2.23).

This whole issue is intriguing. The idea that a member of staff by moving from operational to non-operational duties should have a reduction in pay would create a whole range of challenges for the Service. How, for example would a Fire Authority determine which employees were to have the operational “bonus” and those who would not. Presumably also, those not receiving such a “bonus” would be unavailable to be deployed in the event of a major incident and the scope for appeals and litigation would be wide. The general principle however that where an employee opts in the latter years of their career to step down to a lower paid role or to go part time their pension rights should not suffer unduly is supported.

However the proposal to use a career average for pensionable pay strikes at the very heart of the scheme which is by definition a “final salary scheme”. The most logical approach to this problem would be to change the service accrual for say a half time member of staff to half a year for each year of service in this work pattern. A career average will discriminate hugely against all staff in more senior roles as these are usually achieved towards the latter end of service.

Issue 9 – there should be an option for payment of pensions from age 55 at the discretion of the employer (paragraphs 2.24 – 28).

At face value this does not appear unreasonable however as normal pension age is to be raised to 60 or 65 the likelihood of this occurring is far greater than at present. The resultant costs to be borne by Fire Authorities could therefore encourage Authorities to refuse this option and also encourage a culture of ill-health retirements.

Issue 10 – firefighters retired for ill-health reasons who can take alternative regular employment should have an immediate unenhanced pension. Those permanently disabled from taking regular full-time employment should have enhanced pensions. Enhancements should be limited by reference to normal pension age, or 40 years’ service, whichever is the lower (paragraphs 2.29 – 32).

This proposal is problematic in that it leaves a rather large grey area around the assessment of whether a disability is permanent or not. An employee who is adjudged to have a non permanent disability and can take up alternative employment may wish to appeal later that their disability has now become permanent. Similarly an employee who has a permanent disability may subsequently take up employment. How are these two eventualities to be dealt with ?

Issue 11 – survivor pensions should be extended to unmarried partners (paragraphs 2.34-37)

This proposal is generally supported, however it raises the issue of how multiple unmarried partners are to be treated. Where presently there are arrangements for divorced partners to be effectively taken into the scheme, are separated unmarried partners to be allowed the same rights ?

Issue 12 – maximum spouse/partner's pension should be 25% of the member's pensionable pay, payable for life; and the children's pension too should be a percentage (paragraph 2.38).

This proposal seems fair although the wording is not totally clear. Wouldn't it be better to express this in terms of 50% of pension ? The proposals around removing the reduction in rights after remarriage or cohabitation are welcomed as this is almost impossible to police under current arrangements.

Issue 13 – death benefit should be 3 x pensionable pay (paragraphs 2.39 – 41).

This is supported

Issue 14 – scheme members should pay a contribution of about one third of the costs. On the basis of a normal pension age of 65, costs will range from 19% to 24% of pay depending on the benefits paid, giving a contribution of 6.5% to 8%. (paragraphs 3.1 – 3).

This is generally supported however much of this thinking has undoubtedly been informed by the poor performance of funded schemes over the past five years when investment incomes have been low. The reality of these schemes is that when investment incomes were high employers took contribution "holidays", but now that returns are low there is a feeling that employer contributions are too high. How is this anomaly to be resolved such that employee and employer contributions are kept in balance ?

Issue 15 – options for members of the Firefighters' Pension Scheme to transfer to the new scheme will be considered. Rights under the Firefighters' Pension Scheme will be fully protected (paragraphs 4.3 – 4).

This proposal is supported

Issue 16 – should membership by retained firefighters be automatic or voluntary; or could it depend on whether the person was an existing member of the Service or a new entrant ? Should membership be on the same basis as regular fire-fighters, whether whole or part-time (paragraphs 4.5 – 7).

This proposal is to some extent academic however it is considered that membership should be automatic, but with an allowed "opt out". Clearly arrangements for disability or death in service need to be different for retained personnel.

In paragraph 2.22 a proposal to remove the anomaly where a wholetime firefighter who also holds a retained contract could have two ill-health pensions and two injury benefits. In doing so it appears to address the problem by paying out an injury benefit in respect of the retained contract based on service under that contract. This seems fair, but in reality will significantly disadvantage those members of the retained service who do not also hold wholetime contracts. It means in effect that a retained firefighter who is injured such that they can no longer continue their service will effectively only be awarded a very low pension. It is assumed therefore that any compensation for loss of earnings potential in their main employment would therefore be covered by an enhanced injury allowance (yet to be determined). If this is the case then the cost of injury allowances should fall to be met by the pension scheme as they do now and not fall on individual Fire Authorities. The proposals in paragraph 3.5 indicate the opposite.

Fire Authorities have not been asked to comment on the proposals for financing set out in the consultation paper. These issues are significant however, and cannot be overlooked. The proposal to finance the scheme from central Government is supported but the proposal to leave all the most volatile costs and high risk areas to be met by local revenue budgets will be unacceptable unless significant amounts of net budget are left with Fire Authorities. Clearly Government would want local Fire Authorities to bear the costs of their own pensions discretions, but issues about whether a firefighter is fit or unfit for duty is a medical matter not a managerial one. Similarly if a firefighter is disabled at work this is a factual matter and one over which managers have little or no control.

A cynical view of this position might be to say that Government by removing FSS and therefore grant from Fire Authorities based on the current scheme and then operating a low cost scheme instead would probably generate a significant amount of additional cash in the short term. This would be particularly true if pensions reserves were to be seized to support the new scheme. In addition of course employers will be required to make percentage rate contributions to central Government as employers pension contributions and so would employees. It raises the question of how much of pension contributions can the employer retain to pay for ill health and disability pensions ?