

report

meeting	NOTTINGHAMSHIRE AND CITY OF NOTTINGHAM FIRE & RESCUE AUTHORITY	
	HUMAN RESOURCES COMMITTEE	
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REPORT OF THE CHIEF FIRE OFFICER

CHANGES TO THE FIREFIGHTER PENSION SCHEME

1. PURPOSE OF REPORT

To report to Members the changes to the Firefighters' Pension Scheme arising from the Amendment Orders in 2005 and June 2006 and the implications of the changes to the terms and conditions of service applied to Firefighters.

2. BACKGROUND

- 2.1 The changes to the Firefighters' Pension Scheme provisions have been driven by a number of factors. These include the impact of legislative change, a national review of public sector pension schemes and the way they are funded, the impact of the Pay and Modernisation Agreement and changes to taxation policy.
- 2.2 Many of the changes merely update the terminology used within the Scheme and are technical in nature and are really of interest to those required to administer the pension scheme. These changes have not been included within this report but can be referenced through the background documents listed at the end of this report.
- 2.3 Those changes which significantly impact upon terms and conditions of employment are detailed below.

3. DETAILED REPORT

Firefighters' Pension Scheme (Amendment) (England) Order 2005

- 3.1 **Replacement of compulsory retirement age** : due to changes in legislation in respect of age discrimination, it is no longer legal to require firefighters to retire at 55 (up to Station Manager B) or 60 (above Station Manager B). Scheme benefits will still be limited to thirty years service (40/60ths). Rule A3 now provides for a "normal pension age" which is 55, regardless of role. The change does not affect rights to draw pension from age 50 (with 30 years service); it means that members may continue in the pension scheme and accrue additional benefits after age 55. Continued employment will no longer depend upon age but upon fitness to undertake the relevant role.
- 3.2 The amendment protects the position of those Station Manger B and above who were subject to a compulsory retirement age of 60 and whose ill-health enhancement has been based on a normal pension age of 60. This amendment took effect from 21st November 2005.

- 3.3 **Implications for the Service:** as the Service can no longer assume that a Firefighter will retire at 55, the Personnel section will need to establish intent at least six months before the normal retirement date. As the age profile for entrants to the Service has increased in recent years, it will not be possible for some employees to have achieved 30 years service by age 55 and therefore it is increasingly likely that these employees will wish to continue in employment beyond the normal retirement age to attain their full pensionable service. This change will make workforce planning problematic as the Service will be unable to rely upon known compulsory retirements each year and will have to base recruitment projections on a “best guess” basis. The implications of an older workforce profile may also bring issues around continuing operational fitness and the need to find redeployment for those who are unable to provide operational cover.
- 3.4 **Prevention of duplication of pension payments :** under Rule J4 retained firefighters (who do not currently have access to the pension scheme) may access full pension benefit if their retirement on ill-health grounds is the result of an injury sustained in service. This meant that if a Wholetime Firefighter also working to a retained contract in the same of other FRS suffered a work related injury leading to ill-health retirement, they potentially had access to the payment of two pension awards.
- 3.5 The amendment protects the FPS from duplication of payment by restricting membership to a single pension scheme. The FRA operating the retained contract will be responsible for the gratuity and injury pension element of an award, and the FRA operating the wholetime contract will be responsible for the ill health pension element. This amendment took effect from 21st November 2005.
- 3.6 **Implications for the Service:** the Service does employ a small number of Firefighters on the retained duty system whose regular employment is with another FRA, similarly a small number of our Wholetime Firefighters undertake a retained duty employment with other FRA's. However the majority affected by this amendment will be those employed on a dual employment basis within the Service i.e. Wholetime firefighters with a secondary retained duty contract. The amendment clarifies the position in the case of a qualifying injury.
- 3.7 **Equal treatment of widows and widowers :** this provision provides for equal treatment of widows and widowers in respect of access to death benefit provisions. This acknowledges the increasing number of female firefighters in the Service. This amendment took retrospective effect from 1 March 1992.
- 3.8 **Implications for the Service:** this is a long overdue update of the 1992 Pension Scheme and will have limited financial impact on the Service.
- 3.9 **Medical qualifications of Independent Qualified Medical Practitioners (IQMP) :** this amendment provides that an IQMP should hold a diploma in occupational medicine or an equivalent qualification issued by a competent authority in an EEA state. This amendment took effect from 13th September 2004.
- 3.10 **Implications for the Service:** Circular 3/2003 introduced a requirement on FRA's to use an Independent Qualified Medical Practitioner to determine permanent disability and qualifying injury. The IQMP must have had no involvement in the case under review to ensure neutrality and independence in the decision making process. The Service already has arrangements in place to facilitate this requirement.

Firefighters' Pension Scheme (Civil Partnerships Amendments) (England and Scotland) Order 2005

- 3.11 This Civil Partnership Act came into force on 5th December 2005 and provided an obligation on the Firefighters' Pension Scheme to provide survivor benefits to same-sex partners of scheme members who have registered a civil partnership on the same basis as spouses. The benefits for civil partners must be provided on the basis of service from 6th April 1988 at cost to employers.
- 3.12 **Implications for the Service:** there is unlikely to be any significant financial impact on the Service arising from this amendment.

Firefighter' Pension Scheme (Amendment) (England) Order 2006

- 3.13 Consultation on proposed changes to the FPS commenced in 2004 and were wide-ranging in application. The most notable proposals centred on the introduction of a New Firefighters' Pension Scheme (2006) and amendments to the 1992 Scheme in relation to age retirement and ill-health benefits. A Briefing Paper was issued to staff in November 2004 to raise awareness of the proposed changes.

Amendment to the 1992 Scheme

- 3.14 Members of the Firefighters' Pension Scheme 1992 will continue to have access to the benefits of this Scheme after 6th April 2006 when the New Firefighters' Pension Scheme is implemented. However the following Rules have been amended.
- 3.15 **Ill-health Award Arrangements:** The provisions for determining a members entitlement to an ill-health award under Rule B3 have been amended in line with the New Fire Pension Scheme 2006. This replaces the previous single ill-health award with two awards – a lower and higher tier pension.
- 3.16 The lower tier pension is calculated in the same way as a deferred pension i.e. without any enhancement of service but taking into account dual accrual (i.e. service after 20 years is doubled). The lower tier pension is payable where the member is capable of undertaking other regular employment. Regular employment is defined as employment for an average of not less than 30 hours in each week in any period of 12 months.
- 3.17 The higher tier pension includes an enhancement if the scheme member is unable to undertake other regular employment. This applies only to members with more than 5 year service.
- 3.18 **Review and cancellation of ill health pensions:** Under Rule K1 an FRA had discretion whether to conduct reviews of ill-health pensions, this discretion has been removed and FRA's must undertake reviews at regular intervals (to be defined by the FRA). The reviews should determine whether the member has become capable of carrying out any duty appropriate to the role previously undertaken or fit to undertake other regular employment.
- 3.19 Where higher tier pensions have been granted, whether the condition has improved so that the member could seek regular employment and therefore should receive the lower tier benefit.
- 3.20 Where lower tier pensions have been granted, whether the condition has improved to the point where the individual could return to a role as a firefighter and the FRA reemploy in that capacity. If re-employment is offered and refused, the pension will be cancelled and replaced by a deferred award under Rule B5. It should be noted

that an award cannot be increased as a result of the review. These amendment came into effect from 1st April 2006.

- 3.21 A review of special injury awards under Rule K2 provides for annual review for the first five years of retirement. New rules extend this review period to ten years.
- 3.22 **Implications for the Service:** the introduction of two-tier ill-health retirement benefits is significant for Scheme Members retired on ill-health grounds. The removal of automatic service enhancement will reduce the cost to the pension fund in future years. A likely implication of the new arrangements is that employees will increasingly seek redeployment as an alternative to retirement in order to enhance their pensionable service. The Pension Scheme had already been amended to allow non-operational firefighters to remain as FPS members. This will pose a challenge to the Service in terms of the numbers of non-operational firefighters who will potentially be seeking new roles. Currently the Service does not have any established roles that do not require the role-holder to be fit to undertake operational duties. Reducing the number of operational roles will necessarily impact upon the ability of the Service to ensure contingency arrangements are in place to maintain ridership levels. This issue is currently under review at Strategic Management Team level. A further risk to the Service may arise if firefighters are redeployed into established roles undertaken by non-uniformed employees. In this case, it would be potentially unlawful under Equal Pay provisions to maintain employees undertaking the same role on different salary and benefits. The redeployment would therefore need to be on the conditions of service applied under the NJC for Local Government Services. Consideration of this issue will be part of the review referred to above.
- 3.23 The requirement to review pension payments under Rule K1 will require the Authority to determine the intervals at which reviews should be undertaken. This matter was considered by the Fire & Rescue Authority and a determination made that K1 reviews would not be pursued but that K2 reviews (ill-health awards) would be undertaken annually for the first five years of retirement, this review period will now be extended to ten years (up to the age of 60) under the new provisions. The Authority must now determine the period during which pension payments (Rule K1) are to be reviewed. The requirement to review pension awards will result in a significant additional workload for Personnel and Occupational Health services which may require further resourcing.

Firefighters' Pension Scheme 2006

- 3.24 This became effective from 6th April 2006, although the Order could not be in place by this date. Membership of the Scheme will therefore be retrospective. Members of the FPS1992 will be given the opportunity to transfer to the new scheme.

Main differences between the 1992 and 2006 schemes are as follows:

- § Membership open to regular, retained duty system and volunteer firefighters;
- § Member pension contributions are reduced from 11% to 8%;
- § Normal pension age 60 rather than 55;
- § Deferred pension age of 65 rather than 60;
- § Death benefit of 3 x pensionable pay rather than 2 x pensionable pay;
- § Childrens pension payable up to age 23 if in full-time education or otherwise payable to age 18.

- 3.25 FRA's are required to undertake an initial options exercise once the Scheme Order has been made. This will provide members of the FPS (1992) with information about the relative benefits accrued under both schemes so that they can make an informed choice as to whether they wish to transfer into the NFRS. This is required to take place between January and March 2007.

- 3.26 **Implications for the Service:** the practical implications of maintaining two separate pension schemes will extend for a significant time i.e. until those employed before 6th April 2006 have retired or left the service. It will be imperative that detailed knowledge of the schemes is retained within the Personnel and Payroll sections to avoid the potential for appeals.
- 3.27 The extension of the NFPS to those employed under the retained duty system will increase the numbers of applications and associated support required to manage the scheme and advise scheme members. This will increase the cost to the Authority of pension fund contributions. This additional burden will primarily fall upon the Personnel and Payroll sections. It will also increase the work undertaken on behalf of the Authority by the Nottinghamshire County Council Pensions Team and this is likely to result in an increase to the service charge paid to the County Council. The Service may therefore wish to consider alternate arrangements for scheme administration.
- 3.28 The implementation requirements of introducing the new scheme and providing benefit details to all members of the FPS (1992) during January and March 2007 will place significant demands on the Personnel and Payroll sections. Additional resources may be required to administer this options exercise.

The Firefighters' Compensation Scheme Order 2006

- 3.29 Then non-contributory compensatory provisions covering death and injury on duty that were included in the FPS have been removed and been placed in a new Firefighters' Compensation Scheme (FCS) from 1st April 2006. There have been no substantive changes in the provisions themselves.
- 3.30 Prior to April 2006, such benefits were payable under Section IX of the Grey Book. This has been deemed unlawful under section 34 of the Fire and Rescue Services Act 2004. Scheme members have been made aware that they may apply for protection of this provision by application to the Personnel section.
- 3.31 **Implications for the Service:** the Service will need to manage a register of those opting for protection of current benefits under Section IX of the Grey Book. Members of the FPS have already been advised of the new arrangements.

Circular FPSC 08/2006 (Re-employment and Abatement)

- 3.32 This circular set out details of the Firefighters Compensation Scheme and implications of the new tax regime for pensions. Of particular note, is the relaxation of restrictions on scheme members taking pension benefits before age 50 with at least 25 years service (reduced benefits) or before the normal retirement age of 55 with 30 year service (non reduced benefits). The rules of the FPS have been amended so that a firefighter may now retire, draw pension and any commuted lump sum, and be re-employed immediately.
- 3.33 However the Authority have certain discretion as to (i) whether they will allow re-employment in these circumstances and (ii) whether they will apply the provisions of Rule K4 which allows for the abatement of a pension payable for any period during which the pensioner is employed as a regular firefighter with a FRA. Significantly, the DCLG expect the FRA to exercise their discretion to withdraw the whole or part of the pension on the principle that the annual rate of pay as a firefighter following re-employment plus the annual rate of FPS pension should not exceed the annual rate of pay as a firefighter received immediately prior to retirement.

- 3.34 **Implications for the Service:** The Authority will need to consider its position in relation to the application of Rule K4 and formulate a policy on re-employment so that there is clarity for firefighters about the approach of the FRA to re-employment. In view of the implications on the pension fund of early payment of pension benefits and particularly of the lump sum payment, and of the recommendation of the DCLG on this matter, it is recommended that the Authority adopt a policy on whether it is prepared to re-employ firefighters on this basis (and allow access to a lump sum payment and pension). If it is prepared to consider re-employment on this basis, whether it will adopt a policy withdrawing all or part of the pension to ensure that salary plus pension does not exceed previous earnings.

4. FINANCIAL IMPLICATIONS

- 4.1 The provisions of the Firefighter' Pension Scheme Amendment Order 2005 are reflected in the 2006/07 revenue budget and in the forecasts for the following two years. The main financial implications have already been reported to Members in the Budget Report of 24 February 2006. Members will recall that from 1 April 2006, pension liabilities will be funded by Government and only employer pension contributions, ill health and injury awards will be met from the Authority's revenue account. Whilst the Authority's budgets reflect this change it must be stressed that the budgets are based on estimates and assumptions about levels of employment, levels of pay awards, levels of takeup of scheme membership by retained firefighters and levels of ill health retirements and injury awards. There is still potential for significant under or overspends if these assumptions turn out to be incorrect. In addition changes to the scheme such as the removal of compulsory retirement mean that planning ahead for future years' budgets will also mean relying on estimates. Regular reports of variances to the pensions budget will be made to the Finance & Resources Committee.
- 4.2 The report also highlights the potential for redeployment applications to increase. This may result in additional costs to the Authority, although it is impossible to quantify at this stage. Workloads in the Personnel and Payroll sections and at the County Council will certainly increase, and if current resources are insufficient to cope with the additional work, there may be a requirement to employ additional staff here and pay additional charges to the County Council. Again, these costs are difficult to quantify now because we are in the early stages of the new scheme.

5. PERSONNEL IMPLICATIONS

Personnel implications are contained within the body of the report.

6. EQUALITY IMPACT ASSESSMENT

There are no direct equalities issues arising from this report.

7. RISK MANAGEMENT IMPLICATIONS

- 7.1 As highlighted in the financial implications, there is a risk that the pension costs which fall to the revenue account may under or over spend if the assumptions used to set the budgets turn out to be incorrect. To help mitigate this risk, the regulations allow ill health retirements to be charged to the revenue account over 3 years. It would be prudent to use any underspends arising from pensions to increase the Authority's balances, so that possible future overspends can be covered, thereby levelling the effect on council tax.

7.2 The uncertainty around retirement dates may result in fluctuations in the number of competent firefighters. If this causes an unacceptable level of risk, then the establishment may need to be higher than it is currently.

8. RECOMMENDATIONS

- 8.1 That Members note the contents of this report;
- 8.2 That Members advise the Fire and Rescue Authority of new review arrangements under Rule K1 and Members recommend to the Fire and Rescue Authority that the review period for ill-health pensions be set at five years;
- 8.3 That Human Resources Committee consider and make recommendations to the Authority in respect of;
- (i) allowing early release of pension benefits and immediate re-engagement as a Firefighter; and
 - (ii) on allowing early release of pension benefits and re-engagement as a firefighter, that an abatement will be applied to pension payments to ensure that salary plus pension payment does not exceed previous salary;
- 8.4 That future consideration is given to the management and administration of pension scheme arrangements to take account of the increasing complexity and workload associated with the Firefighter Pension Scheme.

9. BACKGROUNDS PAPERS FOR INSPECTION

None.

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