

## REMUNERATION COMMITTEE – 27 JANUARY 2014

### Firefighter Pension Scheme amendments (FPS 1992 & NFPS 2006)

#### Report by the Chief Fire Officer

#### Introduction

1. On 3 August 2011, the DCLG published a consultation document titled 'Amendments to the Firefighters Pension Scheme (1992) and the New Firefighters Pension Scheme (2006)'.
2. The consultation paper sought views on a range of proposed changes to the Firefighter Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006).
3. On the 7 June 2013, DCLG published their response to the consultation 'Amendments to the Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006): summary of responses'. At the same time (7 June 2013), the resulting Amendment Orders, which make changes to both the 1992 FPS and the 2006 NFPS, were laid before Parliament to be enacted on 1 July 2013.

#### Discretions requiring an OCC consideration

4. **Commutation - Discretion to Permit the Maximum Payment** Employers have the discretion to permit those 1992 scheme members who retire aged over 50 but under 55 with less than 30 years' pensionable service to raise the commutation limit from the current limit of 2.5 times the accrued pension so that they can commute up to the maximum of a quarter of their annual pension for a lump sum on their retirement. Under the new provision, the employer must fully consider the economical, effective and efficient management of their functions and the costs likely to be incurred in each case:
5. Should authorities wish to exercise this discretion and raise the commutation limit, they (as the employer) are liable to pay the increased lump sum costs associated;

#### **Withdrawal of a Pension whilst employed by a Fire and Rescue Authority(Abatement).**

6. Abatement is the process whereby a member's pension can be reduced or stopped if a member retires and then returns to work and their earnings on re-employment (including pension) exceed their earnings before they retired.
7. This amendment to the 1992 scheme widens the employer's discretion to abate a pension paid to a member who is re-employed by a fire and rescue authority. It will also require the employer to pay into the pension fund the amount of paid pension that could have been subject to abatement. The requirement for the employer to be liable for the costs where they do not exercise the discretion to abate a member's

pension would apply to both the 1992 and 2006 schemes. This will only apply to the 1992 scheme to new instances of re-employment since 25 September 2009. The New Firefighters' Pension Scheme 2006 already provides for this discretion.

### **Additional Pension Benefits – Discretion to award additional pension benefits (APB)**

8. The amendment order provides Employers with the discretion to determine whether the following allowances are pensionable. The allowances are:
  - (i) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter's duties under the contract of employment but are within the wider functions of the job;
  - (ii) the amount (if any) paid in respect of a firefighter's continual professional development;
  - (iii) the difference between the firefighter's basic pay in their day to day role and any pay received whilst on temporary promotion or where he is temporarily required to undertake the duties of a higher role;
  - (iv) any performance related payment which is not consolidated into his standard pay.
9. Some additional skills allowances and short periods of temporary promotion are not currently treated as pensionable and we are currently seeking guidance from the OCC legal team following recent high court judgements and Queen's Council advice to other fire authorities.
10. Under the new provision the Authority may exercise their discretion as to whether they continue to be/or are treated as pensionable benefits. Any pensionable benefits for any payments commencing on or after 1 July 2013 falling within these categories would be treated as an additional pension benefit (APB) and would not contribute to the final salary calculation on the pension scheme.

### **Financial and Staff Implications**

11. Staff may submit an application to retire aged over 50 years but under age 55 not having completed 30 years' service and request an increase in the commutation rates from 2.25 times the accrued pension to a maximum of 25%. The additional cost of the lump sum payment will be borne by the authority. With the current increases in contribution rates and uncertainty in relation to the pension scheme, a limited amount of individuals may apply for a consideration.
12. In the event of an individual applying for a position in OCC and they are in receipt of a pension from any fire authority, if the abatement rules are not applied OCC will be required to pay the FPS pension fund the amount which would have been subject to abatement. This may deter individuals from applying for roles within OCC once they have retired from any Fire Service in England. This is also retrospective to 2009 for any individual who has been employed by OCC and in receipt of a pension under the FPS 1992.
13. A number of fire authorities have decided not to deem the detailed allowances as pensionable and are currently subject to applications to employment tribunals to challenge this stance. The majority of Fire Authorities have determined that the allowances are pensionable. There is an impact on staff who are undergoing

temporary promotion. Where this is within their last three years of service, the increased salary is included in their final salary calculation. This will no longer apply, as it will be treated as an Additional Pension Benefit. For those not in their last three years, it incurred an additional pension contribution for no final benefit, whereas the new proposal will enable an individual to accrue an Additional Pension Benefit for the period of temporary promotion.

## **RECOMMENDATIONS**

### **14. The Committee is RECOMMENDED that:**

- (a) the discretion to Permit the Maximum Payment be adopted, but individual proposals be examined on a case by case basis depending on the needs of the Service and agreed by the Chief Fire Officer on advice from the Chief Finance Officer and the Head of Human Resources;**
- (b) abatement will apply in all cases of reemployment of members of the 1992 and 2006 schemes with any Fire & Rescue Authority in any capacity or is employed by any employing public sector organisation without going through an open competition;**
- (c) the Fire Authority determines that all of the salary benefits listed are treated as pensionable benefits and attract an Additional Pension Benefit as detailed in the FPS 1992 and the NFPS 2006.**

**DAVID ETHERIDGE**

Chief Fire Officer

Background papers: Nil

Contact Officer: Simon Furlong, Assistant Chief Fire Officer (01856) 855206

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