

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

EXECUTIVE COMMITTEE

10 OCTOBER 2011

1. FIREFIGHTERS' PENSION SCHEMES

Report of the Chief Fire Officer.

Recommended

THAT the Executive Committee approve, on behalf of the Authority, the draft responses contained in Appendix 1 as the basis for the submission in response to the consultation document from the Department for Communities and Local Government: Amendments to the Firefighters' Pension Scheme and the New Firefighters' Pension Scheme.

2. PURPOSE OF REPORT

This report is submitted to the Executive Committee to seek approval to the basis of the Authority's response to the Department for Communities and Local Government consultation which seeks views on a range of proposed changes to the Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006).

3. BACKGROUND

3.1 A consultation document was issued on 3rd August 2011 which seeks views on the following key proposed changes to the Firefighters' Pension Schemes by 26th October 2011:

- the removal of rule A14, compulsory retirement on the grounds of efficiency.
- changes to the indexation of additional pension benefits.
- changes to the maximum commutation payment.
- proposals to deal with age discrimination for all members of the scheme including Chief Fire Officers.
- amendments to the medical and non-medical appeals processes.
- abatement to pensions.
- technical amendments and alignment with tax legislation.

- 3.2 The consultation is primarily aimed at Fire and Rescue Authorities, members of the Firefighters' Pension Schemes and key employer and employee representative bodies including the Local Government Group, Chief Fire Officers' Association and Fire Brigades' Union.
- 3.3 Following consultation a summary of the responses will be published on the Department's website within three months of the end of consultation.
- 3.4 The Department has confirmed that the consultation complies with the Code of Practice on Consultation. However, an Impact Assessment has not been completed but will be published following the completion of the consultation. This will be done to enable the consultation responses to be taken into consideration for all the Impact Assessments.
- 3.5 Prior to the publication of this consultation the Department has engaged with the Firefighters' Pension Committee and discussed the proposed changes.
- 3.6 The specific proposals and recommended responses to the proposals can be viewed in Appendix 1. The entire document can be viewed at www.communities.gov.uk/publications/fire/consultationfirefighterspension

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment has been undertaken. Additionally, the Department for Communities and Local Government have confirmed that they will use the evidence and views provided by the consultation to fully inform all Impact Assessments. These Assessments will inform any final decisions and will be published on the Department's website.

5. **LEGAL IMPLICATIONS**

The course of action recommended in this report does not raise issues of a legal nature which should be drawn to the attention of the Authority's Monitoring Officer as these responses form part of a consultation process. The outcome of the consultation may amend or change the level of discretion and judgement the Authority has

with regards to pensions. The decisions/judgement made may have legal implications.

6. **TRADE UNION CONSULTATION**

As the consultation process for the Model policy is still ongoing there has been no agreement yet. The Department are seeking the view of stakeholders including Fire and Rescue Authorities, and employee/employer representatives.

7. **FINANCIAL IMPLICATIONS**

There are no direct financial costs for the Authority arising from this consultation process. The outcome of the consultation may provide the Authority with more discretion with regards to pension payments which would need to be considered further by the Authority.

BACKGROUND PAPERS

Communities and Local Government – Amendments to the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006) Consultation Document

VIJ RANDENIYA
CHIEF FIRE OFFICER

APPENDIX 1

Extract from the Department of Local Government and Communities Consultation on: Amendments to the Firefighters' Pension Scheme (1992) and the New Firefighters' Pension Scheme (2006)

1. Provisions and proposals

Firefighters' Pension Scheme (1992) Rule A14: Compulsory retirement on grounds of efficiency

Issue

- 1.1 To consider the continued need for Rule A14 of the Firefighters' Pension Scheme given that the means to compulsorily remove any employee from employment should be undertaken under employment law.

Background

- 1.2 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.
- 1.3 Government policy is to prevent age being a consideration for compulsory retirement or redundancy. For instance, 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.
- 1.4 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 A1 4 does not change this position. As such, the Department is seeking views on the need to retain Rule A1 4 in light of the Government's general direction of travel in this area and the announced changes to employment and equalities legislation, and on whether its contractual application might give rise to indirect discrimination.

Proposal

- 1.5 The proposal, in paragraph 1(b) of the draft Order, is to revoke Rule A1 4 so that, in future, any decision to compulsorily remove a firefighter from employment is dealt with in accordance with employment and equalities law.

Benefits

- 1.6 Fire and rescue authorities are being given greater discretion under the changes to commutation rules to help incentivise voluntary exits. If Rule A14 is revoked, any moves to compulsorily remove individuals from employment would need to be undertaken in accordance with employment and equalities law. Individuals would no longer be able to be initially identified for compulsory exits based on their age and length of service.
- 1.7 The proposals will ensure that Firefighters' Pension Scheme Order reflects the Government's direction of travel on employment and equalities legislation.

Costs

- 1.8 The removal of A14 would mean that authorities would need to consider all staff for reductions in the workforce, rather than using compulsory retirement to reduce staff levels. The Government Actuary's Department has estimated that savings to the Scheme in excess of £50,000 per person may be achieved where staff below pension age opt for voluntary exit and become deferred pensioners, rather than working to their minimum pension age.⁴

West Midlands Fire and Rescue Authority (WMFRA) Response:

WMFRA would support the removal of Rule A14: Compulsory retirement on grounds of efficiency. The removal would be in line with equality legislation. The performance of employees should be the determining factor for continuing employment and not an employees age.

Firefighters' Pension Scheme (1992) Rule B5B: Additional pension benefit: long service increment

Firefighters' Pension Scheme (1992) Rule B5C: Additional pension benefit: continual professional development
(Change in indexation from Retail Price Index to Consumer Price Index)

Issue

- 1.9 To enable changes to make the up-rating of additional pension benefit in accordance with the *Pensions (Increase) Act 1971*.

Background

- 1.10 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. The Budget set out that:

⁴ These figures are based on data provided in the 2007 Valuation, increased by the value of the 2007, 2008 and 2009 pay awards and using the corresponding discount rate of 3.5 per cent.

"The Government will use the CPI [Consumer Price Index] for the price

indexation of benefits and tax credits from April 2011. The CPI [Consumer Price Index] provides a more appropriate measure of benefit and pension recipients' inflation experiences than RPI [Retail Price Index], because it excludes the majority of housing costs faced by homeowners (low income households are subsidised separately through Housing Benefit, and the majority of pensioners own their home outright), and differences in calculation mean it may be considered a better representation of the way consumers change their consumption patterns in response to price changes. This will also ensure consistency with the measure of inflation used by the Bank of England. This change will also apply to public service pensions through the statutory link to the indexation of the Second State Pension."⁵

- 1.11 As set out in the *Firefighters' Pension Scheme Circular 8/2010*, pensions in payment and deferred awards for members of the firefighters' pension schemes are index-linked under the Pensions (Increase) Act 1971 and the rate is set by Treasury in an order under that Act. Therefore, the change in indexation of pensions in payment, or deferred pensions, occurs automatically without any amendment to the 1992 and 2006 Schemes.
- 1.12 However Circular 8/2010 made clear that references to Retail Price Index in the schemes' rules should be amended to reflect the change to Consumer Price Index made by the Pensions Increase (Review) Order.

Proposal

- 1.13 It is proposed that the following Scheme rules will be amended so that the amount of any additional pension benefit accrued at the end of the financial year shall be increased by any increase under the Pensions (Increase) Act 1971:
- Firefighters' Pension Scheme 1992 (paragraph 2(f) and 2(g) in the Schedule to the draft Order):
 - Rule B5B(3) (*Additional pension benefit long service increment*),
 - Rule B5C(3) (*Additional pension benefit continual professional development*); and
 - New Firefighters' Pension Scheme 2006:
 - Part 3, rule 7A(3) (*Additional pension benefit long service*)
 - Rule 7B(3) (*Additional pension benefit continual professional development*).
- 1.14 Consumer Price Index up-rating was applied from 11 April 2011 in accordance with the annual Pension Increase (Review) Order. The intention is to amend the references to "Retail Price Index" in the Scheme rules so that the amounts are increased by "any increase under the Pensions (Increase) Act 1971". To fulfil this aim, it is necessary to apply the amendment retrospectively to 11 April 2011.

⁵ http://Cdn.hrn-treaSUIY.g0V.UMUnebUdget_complete.pdf

Benefits

- 1.15 As the proposals bring the additional pension benefits in line with the Pensions (Increase) Ad 1971, the impact may only be determined for this year. For 2011-12 the Act changed the rate of indexation from the Retail Price Index of 4.6 per cent to the Consumer Price Index of 3.1 per cent, representing a saving to the scheme.
- 1.16 The proposals should also reduce the administrative burden on fire and rescue authorities by ensuring that all pension benefits are linked to the Pensions (Increase) Ad 1971 whether in the accrual, deferred, or payment stage.

Costs and risks

- 1.17 As the allowances paid are locally determined, the exact savings to the fire and rescue authority or cost to the member cannot be calculated. As an indication of the immediate change in value, assuming a factor of 20, the annual additional pension benefit for a £500 continual professional development payment is about f 10. If awarded in 2010-11 the additional pension benefit accrued in year would have been valued at f 10.46 under the Retail Price Index, and is instead valued at £1 0.31 under the Consumer Price Index. It should be noted that the Consumer Price Index will also be applied to additional pension benefits accrued in previous years.

WMFRA Response:

WMFRA would support this proposal. The proposal would reduce and simplify the administrative burden of the scheme for the Service. It would also harmonise this element of the scheme with other pension benefits.

Firefighters' Pension Scheme (1992) Rule B7: Commutation — general provision

Issue

- 1.18 To 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.

Background

- 1.19 Currently, under rule B7, 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 under rule B7(5) and may not exceed 2.25 times the amount of pension.
- 1.20 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.

Proposal

- 1.21 Paragraph 2(j) of 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. As set out in paragraph 14(a) of the Order, 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.

Benefits

- 1.22 The proposal will allow fire and rescue authorities to remove a disincentive for members to choose early retirement. It will also provide greater flexibility and choice over retirement dates for both scheme members and authorities.

Costs

- 1.23 There are no additional direct costs to the pension scheme as a result of this policy. The cost to the Pension Scheme remains the same, as the Government Actuary's Department have advised the Department that these changes would be actuarially neutral. The proposal may, however, affect the cash flow of an authority, as a more substantial commutation payment may be made at the point of retirement.
- 1.24 Fire and rescue authorities will be provided with the discretion to increase the commutation limit to a quarter of the pension; there is no obligation to exercise this option. The effect on the cash flow of each authority will depend on the individual pension rights of any volunteers, and the Department expects that fire and rescue authorities will only exercise this option where it is fiscally responsible to do so.
- 1.25 The amount of pension commuted is dependant 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.

WMFRA Response:

WMFRA would support the proposal for the Authority to define if/when discretion should be used.

Firefighters' Pension Scheme (1992) Rule: G1 Pensionable pay and average pensionable pay

Issue

- 1.26 To ensure consistency in approach to, and proportionate arrangements for, the definition of pensionable pay for "final salary" arrangements in the fire service schemes, in particular in relation to how allowances and emoluments are dealt with.

Background

- 1.27 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.
- 1.28 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.
- 1.29 Following a survey of pension administrators within fire and rescue authorities in 2009, it became clear that as fire and rescue authorities responded to new operational demands, new allowances and emoluments were being introduced locally and deemed pensionable, despite often being temporary in nature. This is a significant issue for the scheme as the additional allowance generates a liability for both the future cost of the increase in pension payments required, and also for the past cost which has not been covered by earlier pension.
- 1.30 Concerns were raised with the Firefighters' Pension Committee over the interpretation of pensionable pay and, in November 2009, a formal consultation was undertaken on two options to address this issue. The outcome of the consultation was considered and discussed at the Firefighters' Pension Committee. The proposal set out below represents the Department's final approach.

Proposal

- 1.31 Following the outcome of that policy consultation, the Department proposes to amend Firefighters' Pension Scheme rule B5C (additional pension benefit) and New Firefighters' Pension Scheme rule 7(B) of Part 3 to:
- *adopt additional pension benefit arrangements for temporary allowances and emoluments, at the fire and rescue authority's discretion, similar to those introduced in 2007 for Continued Professional Development.*

- 1.32 Paragraph 2(g) of the draft Order reflects the Department's approach, amending rule B5C (additional pension benefit) to clarify the definition of pensionable pay and to make provision for a new additional pension benefit which will allow for temporary emoluments and allowances to be pensionable on a time limited basis. Paragraph 7(a) of the draft Order mirrors these changes in rule G1 (pensionable pay and average pensionable pay).
- 1.33 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. Additional pension benefit arrangements could then apply to all other allowances or emoluments at the discretion of the fire and rescue authority. This means that the amount of additional contribution paid in a year would receive an actuarially valued pension which would be linked to the Pensions (Increase) Act 1971 and would come into payment on retirement alongside the member's main pension benefits.
- 1.34 On the issue of London Weighting, this should continue to be pensionable as it forms part of a London firefighters' basic pay. However, for instance, Flexible Duty Allowance is a temporary allowance and all new recipients of Flexible Duty Allowance should be dealt with under additional pension benefit arrangements, at the discretion of the fire authority.
- 1.35 The draft Order amends rule B5C so that fire and rescue authorities shall credit the firefighter with an amount of additional pension benefit in respect of that year:
- *B5C (5) Paragraph (1) applies where a fire and rescue authority determines that any of the benefits listed in this paragraph are pensionable:*
 - (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 Of any) paid in respect of a firefighters' 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.*

Benefits

- 1.36 The implementation of an additional pension benefit arrangement provides pension protection to members who have accrued benefits under temporary arrangements, whilst providing a fairer and more proportional approach to financing pensions for the taxpayer.

1.37 Further benefits of this approach are that:

- fire and rescue authorities would retain the necessary flexibility to provide emoluments and allowances locally to their staff
- adopting additional pension benefit arrangements would allow any new pension liability arising from emoluments and allowances to be borne by the employer and the member in direct proportion to the value of the allowance or emolument
- members awarded allowances or emoluments in the latter years of their active service will receive a benefit related to their corresponding contributions
- the taxpayer will not need to fund any additional past pension cost not covered by previous contributions
- it should also have a downward pressure on the cost of the scheme as the future liabilities in relation to the final pensionable pay bill should be less
- should a member lose an allowance shortly before retirement, they will continue to receive a benefit proportional to the contributions they have paid.

Costs and risks

1.38 It is intended that additional pension benefit arrangements should be self-funding and not an additional burden on the pension fund. As the benefit will only be generated over the period the allowance is paid, the additional past service cost which arises under the current arrangement, will not need to be funded.

Transitional protections

1.39 As set out in paragraph 7(a)(v) of the draft Order, the Department is not proposing any retrospective application of the change to pensionable pay. Where a member is already receiving an allowance which is treated as pensionable at the time the scheme is amended (and that the authority had the *vires* to make that allowance pensionable), that allowance should continue to be regarded as pensionable pay. Therefore any benefits already accrued by scheme members will be protected.

WMFRA Response:

WMFRA would support the principle of this proposal to amend the rule and re-define pensionable pay. We further support the proposal of what constitutes pensionable pay and the determination of temporary allowances for pension purposes should be at the discretion of the Authority. However, it is recognised that this could make the scheme more difficult to administer and controls will need to be put in place.

Firefighters' Pension Scheme (1992) Rule G3A: Exemption from payment of pension contributions — 30 years pensionable service before age 50 (Age Discrimination)

Issue

- 1.40 To ensure that members who joined the Firefighters' Pension Scheme before the age of 20 do not suffer any potential indirect discrimination as a result of being unable to retire under the terms of the scheme once they have accrued full pension entitlement.

Background

- 1.41 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).
- 1.42 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.
- 1.43 The Department's view is that the action is not itself discriminatory; although there may be scope for potential indirect discrimination given the member does not have any discretion to retire. However, the matter is not discriminatory once the member turns 50 as they may elect to retire with a pension.
- 1.44 Various options were considered with the Government Actuary's Department including allowing members to accrue more than 30 years' pensionable service. The issue also has been discussed in detail at the Firefighters' Pension Committee.

Proposal

- 1.45 The draft order makes provision at paragraph 7(f) 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.*
- 1.46 Under this proposal, the employing authority would need to continue to make contributions.

Benefits

- 1.47 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.

Cost to the pension scheme

- 1.48 The question of potential age discrimination arises as a result of the introduction of the Employment Equality (Age) Regulations 2006⁶. The proposal is therefore to be applied retrospectively to 1 December 2006.
- 1.49 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.

Chief Fire Officers

- 1.50 Under the Scheme rules, Chief Fire Officers may only retire before age 55 with the permission of the authority. Some Chief Fire Officer members of the Firefighters' Pension Scheme have therefore alleged that in their case, the discrimination continues until age 55, at which point they may elect to retire with a pension. A Chief Fire Officer who joined the Firefighters' Pension Scheme before age 25 may therefore contribute more than 30 years service before being permitted to retire by their employer.
- 1.51 The Department's view is that the matter is not discriminatory as the existing Firefighters' Pension Scheme rules makes clear that with the accession to the role of Chief Fire Officer comes the expectation that these individuals may have to work until the age of 55 unless their employer agrees to their earlier retirement. The member therefore accepted the potential increase in retirement age aware of the additional contributions when deciding to take up the Chief Fire Officer post.
- 1.52 The matter has been complicated as some Chief Fire Officers have a protected pension age of 50 under taxation law, whilst some do not. This is due to the changes brought in by the Finance Act 2004. Those members without a protected pension age of 50 can still retire under the rules of the pension scheme before the age of 55 with full pension benefits. The allegation is that, because these members will be subject to an unauthorised payment tax charge, they are being discriminated against by the pension scheme on the grounds of age.

⁶ Statutory Instrument 2006 No. 1031

As the pension scheme permits full access to the individual's pension rights

before the age of 55, with the agreement of the employer, the Department's view is that discrimination does not arise under the terms of the scheme.

- 1.53 Based on the data submitted by fire and rescue authorities, an indicative cost of applying a contribution holiday until age 55 for a Chief Fire Officer has been estimated. Using the average Chief Fire Officer salary of £131,000, the cost of the holiday contributions to an average Chief Fire Officer's salary is £14,400 per annum. If the contribution holiday was applicable for the full 7 years, this would result in a total rebate from the Scheme to a Chief Fire Officer of £100,800. Based on current service, we anticipate that up to 19 current Chief Fire Officers have the potential to achieve more than 30 years' service before the age of 55.

WMFRA Response:

WMFRA would support this proposal as it will assist to protect the scheme from discrimination challenge. The Service would still need to pay employers' contributions to ensure continuity of membership to the scheme for the individual as this will provide some financial security should the employee be injured or die in service.

Firefighters' Pension Scheme (1992) Rule H1A: Review of medical opinion (Medical Appeals)

Issue

- 1.54 To 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.

Background

- 1.55 Under the existing arrangements of Part H (Determination of questions and appeals), 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. Similarly, there is no mechanism for a Board of Medical Referees to reconsider its opinion in light of new medical evidence.

Proposal

- 1.56 The draft order makes provision 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

- 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; paragraph 23(c) — Schedule 9 (appeals)
- 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; paragraph 23(f)— Firefighters' Pension Scheme Schedule 9 (appeals), New Firefighters' Pension Scheme Annex 2 (Appeals to Board of Medical Referees).

Benefits

- 1.57 This proposal 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.

Costs and risks

- 1.58 As the proposals seek to provide a more cost effective alternative to Judicial Review or appeal to the Board of Medical Referees, particularly where parties agree that the decision should be reconsidered; there is no expected total increase in costs for fire and rescue authorities.
- 1.59 The draft Order introduces the option for a review of the medical opinion by an Independent Qualified Medical Practitioner in rule H1A (review of medical opinion), but still allows the member to appeal to a Board of Medical Referees through rule H2 (appeal against a medical decision). As such, if the member remains dissatisfied with the result of their appeal under rule H1A, they may still appeal to a Board of Medical Referees. This could therefore generate additional costs to the fire and rescue authority. However, the proposal is designed to facilitate review only in instances where additional evidence has come to light or where parties agree there is a case for review.

WMFRA Response:

WMFRA agrees with and supports this proposal. It would provide for more timely decisions and potentially reduce the need and costs of pension medical appeals for the Service.

issues (non-medical issues)

Issue

- 1.60 To ensure that the appeal for a non-medical award claim, or payment, is undertaken through the appropriate mechanism.

Background

- 1.61 If an authority does not admit a person's claim to an award or payment in respect of an award, rule H3 of the Firefighters' Pension Scheme currently provides for appeal to the Crown Court. Whilst this may have been appropriate when no mechanism existed to appeal the decision of an authority, alternative arrangements are now in place. For example, schemes are now required, under pensions legislation, to have internal dispute resolution arrangements in place and a subsequent process for appeal to the Pensions Ombudsman. The relevant dispute resolution arrangement for the both the 1992 and 2006 Schemes is set out in the Internal Dispute Resolution Procedures document which is available on the Department's website, and summarised in Firefighters' Pension Scheme Circular 1/2009.

Proposal

- 1.62 Paragraph 8(c) of the draft order substitutes 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; ultimately reducing reliance on the Courts and making the appeals process easier to undertake and follow for both the member and the fire and rescue authority.

Benefits

- 1.63 This proposal seeks to refocus appeals through a more appropriate mechanism, making any future appeals more cost effective and to seek to provide a quicker resolution.

Costs and risks

- 1.64 As the proposals seek to provide a more cost effective alternative to appeal to the Crown Court and to align the Orders with the existing dispute resolution arrangements, there is no additional cost expected.

WMFRA Response:

WMFRA supports the proposal for non medical appeals to be to the Pensions Ombudsmen and not with the Crown Court. This should provide more timely resolution for the employee and the Service and reduce Service costs.

Firefighters' Pension Scheme (1992) Rule K4: Withdrawal of pension

during service as regular firefighter (abatement)

Background

- 1.65 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.

Proposal

- 1.66 Paragraph 12(c) sets out the Department's proposal to amend Rule K4 to expand the definition of reemployment, so that abatement of pension may apply to a member reemployed in any role by any authority, including non-operational and retained firefighter roles. Paragraph 14(a)(iv) of the draft Order also changes rule LA2 (special payments and transfers into Firefighters' Pension Fund) to require an authority who 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.

Benefits

- 1.67 The proposal will enable fire and rescue authorities to follow Government policy on abatement, to protect public funds. As abatement limits the total public sector remuneration payable at any one time in respect of a particular job to the pensionable pay of that individual at retirement, it prevents both the cost of the pay and pension associated with that role falling to the public purse.

Costs

- 1.68 The proposal seeks to reduce the overall cost to the Fund, and taxpayer, by refunding any pension paid by a fire and rescue authority in excess of the members' previous salary.

WMFRA Response:

WMFRA would support this proposal to abate the pension benefit. However, although this can be managed locally for people retiring and then returning to this Service a more structured approach is required across the public service.

Pensions tax

Background

- 1.69 The Finance Act 2004 included tax simplification measures which defined the different forms of pension payments and how they should be treated for tax purposes, for example, taxation of pensions, lump sums and dependents' pensions.

Proposal

- 1.70 The draft instrument amends scheme terminology to be consistent with HM Revenue and Customs' rules and definitions, as set out in the Finance Act 2004. A full list of the rules to be amended and the paragraphs in the Order effecting the changes is provided in **Annex B**.

Benefits

- 1.71 The proposal will simplify the scheme legislation and ensure consistency with HM Revenue and Customs' rules and definitions, making tax implications easier to understand.

Costs

- 1.72 As the proposal seeks only to revise the terminology of the Scheme to reflect existing definitions, there is no anticipated additional cost to fire and rescue authorities or the public.

WMFRA Response:

WMFRA would support this proposal to have consistent use of terminology with HM Revenue and Customs rules and definitions.

Other amendments

Issue

- 1.73 To amend the existing Order to ensure they reflect the changes made as a result of this Order and that any statutory references mirror the current legislation.

Background

- 1.74 The Firefighters' Pension Scheme rules were last updated in February 2008, since which time there have been a number of regulatory changes which have not been reflected in the terminology used by the Scheme. These amendments aim to ensure that all statutory references reflect the existing legislation, and that any changes made by this Order are shown consistently throughout the scheme Order.

Proposal

- 1.75 A full list of amendments, including the rules scheduled for deletion and new parts to be added are provided in Annex C.
- 1.76 There are two amendments which are to be applied retrospectively, as set out in paragraph 1. Paragraphs 7(b) and 7(f) reflect the proposals listed as Age Discrimination, and are to be applied retrospectively to 1 December 2006 as the question of potential age discrimination arises as a result of the age discrimination regulations introduced under the Employment Equality (Age) Regulations 2006.
- 1.77 Paragraphs 2(f) and 2(g) reflect the proposals to up-rate additional pension benefits in line with the Pensions (Increase) Act 1971. Consumer Price Index up-rating was applied from 11 April 2011 in accordance with the annual Pension Increase Review Order. As the proposal intends to link additional pension benefit up-rating to any increase under this Order as announced by the Chancellor in the Budget, it is necessary to apply the amendment retrospectively to 11 April 2011.

Benefits

- 1.78 These changes will ensure that changes are made consistently throughout the Order and that the Order is consistent with primary legislation. It is expected that these changes will make it easier for fire and rescue authorities and individual members to understand and follow the Order.

Costs

- 1.79 No additional costs are expected as these changes only seek to ensure the consistency of terminology and current legislation across the Statutory Instrument.

WMFRA Response:

WMFRA would support the proposal to update using current legislation which would be applied from the date of the primary legislation.