

## **FIREFIGHTERS' PENSION COMMITTEE**

### **CONSOLIDATION OF THE FIREFIGHTERS' PENSION SCHEME 1992**

#### **1. Issue**

- 1.1 The need to consolidate the Firefighters' Pension Scheme 1992 (FPS) and proposals for handling the work.

#### **2. Background**

- 2.1 There have been substantial changes to the pension arrangements for firefighters, particularly over the past four years. These changes have arisen from the modernisation of the Fire and Rescue Service and from new finance and pensions legislation. Prior to these changes, there were several amendments to the FPS arising from changes to primary pensions and finance legislation. The effect of these amendments is that the FPS, which was last consolidated by the Firemen's Pension Scheme Order (no.129 of 1992), is now supplemented by numerous rule changes making reference to the scheme rules a complicated and unwieldy process.
- 2.2 We have compiled "unofficial" consolidated versions i.e., versions of the original legislation with insertions of amended text, of the FPS 1992, the New Firefighters' Pension Scheme 2006 (NFPS) and the Firefighters' Compensation Scheme 2006 (FCS), on a regular basis and placed these on the DCLG Firepensions Website to assist scheme administrators and other stakeholders in understanding and applying the scheme as amended.
- 2.3 However, in the course of scrutinising the various amendments as they pass through the Parliamentary process, the Joint Committee on Statutory Instruments (the Parliamentary Committee overseeing standards of secondary legislation) have commented that the amendments to the FPS 1992 should be formally consolidated into a new S.I. as soon as possible.

#### **3. Relevant Statutory Instruments**

- 3.1 Amendment orders since 1992 are as follows:-

Statutory Instrument No. 129 OF U1992

- Consolidation of pension arrangements into FPS 1992.

Statutory Instrument No. 1829 of 1997

- Allowing for the provisions of information to authorised persons and financial institutions.

#### Statutory Instrument No. 2309 of 1997

- Provision for medical appeals to be determined by a board of three medical referees instead of one.

#### Statutory Instrument No. 2851 of 1997

- Allowing for firefighters who had opted out or transferred out of the FPS and subsequently were mis-sold a pension, to re-join the scheme.

#### Statutory Instrument No. 1010 of 1998

- Amendment to provisions in respect of guaranteed minimum pensions consequential to amendments to the Pension Schemes Act 1993.

#### Statutory Instrument No. 3691 of 2001

- Provision for pension sharing on divorce and nullity in accordance with the Welfare and Pensions Reform Act 1999.

#### Statutory Instrument No. 1912 of 2004

- Change to the definition of “regular firefighter”
- Provisions for continued pension contributions and counting of service during maternity and paternity leave
- Provisions for calculation of pensions for part-time regular firefighters
- Requirement for use by FRAs of Independent Qualified Medical Practitioners for medical decisions

#### Statutory Instrument No. 2980 of 2005

- Replacement of the compulsory retirement age by a normal pension age of 55 for all members
- Provisions for treatment of salary sacrifice
- Provisions to prevent duplication of benefits where a firefighter has more than one contract of employment
- Removal of the anomaly where a person could claim early payment of a deferred pension if they were unfit for firefighting but capable of other duties of the role
- Extensive changes to terminology to reflect move from “rank” to “role” and “brigade” to “Fire and Rescue Authority”

#### Statutory Instrument No. 3228 of 2005

- Amendments consequential to the Civil Partnerships Act 2004 which enabled civil partners to qualify for survivor benefits on a similar basis to spouses

#### Statutory Instrument No. 1810 of 2006

- Introduction of two-tier ill-health retirement provisions
- New financing arrangements for pensions

- Tax simplification changes arising from Finance Act 2004
- Removal of duty related death and injury compensation provisions into a new Firefighters' Compensation Scheme (FCS), including incorporation of Grey Book death and injury payments
- Provision for the FPS to close to new members from 6<sup>th</sup> April 2006 with transitional provisions for new entrants to the service in advance of the NFPS.

#### Statutory Instrument No. 3433 of 2006

- Amendments consequential to the introduction of the NFPS and FCS

#### Statutory Instrument No. 214 of 2008

- Provision for Additional pension benefits in relation to the phasing out of Long Service Increment (LSI) and introduction of a Continuous Professional Development (CPD) allowance

3.2 In addition to amendments to the FPS 1992, the NFPS came into force as a result of Statutory Instrument 3432 of 2006 and has subsequently been subject to amendment by Statutory Instrument 213 of 2008 and the FCS came into force through Statutory Instrument 1811 of 2006. This too has been amended by Statutory Instrument 3434 of 2006.

## **4. Proposed Action**

4.1 We propose that any consolidation of the FPS 1992 should:

- Correct errors (including drafting errors)
- Remove redundant provisions
- Correct unintended effects/anomalies
- Clarify rule purpose / intent

A summary of the main rules affected is attached at Annex A although this list is not exhaustive.

4.2 No new rules or rule amendments of substance are planned and they would not be allowed by the consolidation process. However, the process does provide an opportunity for amendments to be made where stakeholders have identified problems with the application of the scheme rules and consider a change to be necessary or desirable. We intend to issue a circular announcing the consolidation and inviting stakeholders to bring any issues or suggested amendments to our attention.

4.3 As part of the consolidation, we will aim to update the language used, adopting the style used in the NFPS where appropriate. We will also consider using a more user friendly format. This may be by using a numbering format that is more consistent with that used in the NFPS; more logical grouping of rules; restructuring the sections. In addition,

we will need to ensure that there is common reference to, and application of, primary legislation such as the Finance and Pensions Act, and secondary legislation such as HMRC regulations etc.) as well as consistency of terminology between the FPS, NFPS and the FCS.

## **5. Timetable**

- 5.1 We will allow for a consultation period of twelve weeks from the date of issue of the circular, during which time we will prepare initial drafting instructions to the Department's lawyers. We will consider, and respond to issues and comments raised with a view to issuing draft orders for comment, then aim to finalise drafting and complete the process by the end of the year.

## **6. Conclusion**

- 6.1 The Committee to note the action proposed and is invited to consider paragraph 4.2 with a view to bringing to our attention any issues or suggested amendments that could be considered for inclusion in the consolidation.

***Communities and Local Government  
April 2008***

## Annexe A

### CONSOLIDATION OF THE FIREFIGHTERS' PENSION SCHEME 1992 PROPOSED AMENDMENTS

Rule	Purpose	Recommendation
A3	<p>Exclusive application to regular firefighters. The rule applies the Scheme to regular firefighters who were employed before 6<sup>th</sup> April 2006, their spouses or civil partners and dependants.</p> <p>A3(3) excludes from membership any person who has temporary employment (Rule A4) or is an instructor at a training centre maintained by the SofS (Rule A5).</p>	<p>A(3) is no longer required. Any regular firefighter employed as an instructor at a training centre maintained by the SofS would do so on secondment or, following resignation, as a deferred pensioner or whilst in receipt of an ordinary pension.</p>
A4	<p>Applies the Scheme to a regular firefighter who is employed temporarily (a) as an instructor at a central training institution maintained by the SofS; (b) an inspector appointed under s. 24 of the Fire Services Act 1947; (c) in connection with training members of the armed forces; and (d) in connection with training in any country or territory outside the UK.</p>	<p>No longer required. Instructors or trainers would be employed on secondment, etc (see A3 above). Section 24 of the 1947 Act has been repealed. Equivalent provision has not been made in the NFPS 2006.</p>
A5	<p>Applies the Scheme to a person who is employed permanently as an instructor at a central training institution maintained by the SofS.</p>	<p>No longer relevant. See A3 and 4 above. Equivalent provision has not been made in the NFPS 2006.</p>
A6	<p>This ensures that an employee of a fire and rescue authority whose employment is restricted to duties as are desirable for training (as an auxiliary firefighter).</p>	<p>No longer relevant. The Auxiliary Fire Service was part of the UK's Civil Defence capacity and no longer exists.</p>
A7	<p>The provision sets out how to work out the length of a period of service when calculating benefits.</p>	<p>Required, although it would be more appropriately placed in the Part dealing with pensionable service (see part F).</p>
A8	<p>The provision explains how aggregate pension contributions should be interpreted</p>	<p>Required, although it would be more</p>

	when an award is calculated.	appropriately placed in the Part dealing with pensionable pay (see part G).
A10	Defines “disablement”. (1) requires the matter to be considered at the time the question arises for decision; and for the disablement to be permanent. (1A) provides that in determining whether a disablement is permanent, an authority shall have regard to whether the disablement will continue to normal pension age; and (2) defines disablement as “incapacity, occasioned by infirmity of mind or body, for the performance of duty, except that in relation to a child it means incapacity to earn a living.	Required but may need to be considered as a consequence of the London 3JR case
A12	This explains how relevant service in the armed forces may qualify for awards under the Scheme.	This is relevant to Part I of the Scheme, but in so far as National service has been abolished it is not apparent that the provision is still required.
A14	This provides that a person who has qualified for a pension under Rule B1 (i.e. is age 50 and has completed 25 years’ service) may be required to retire on the grounds of efficiency.	It is not clear why this provision is required. A pension under Rule B1 would be payable regardless of the reason for retirement i.e., whether a voluntary retirement or dismissal. The reason for leaving is an employment issue and B1 provides the relevant pension.
A15	(1) allows an authority to compulsorily retire a firefighter on grounds of disablement and activates the payment of an ill health award under Rule B3. (2) provides for a retirement to be void if, on appeal board of medical referees under Rule H2 decides that the appellant is not permanently disabled.	It is not clear why this provision is required. A pension under B3 would be payable if the permanent disablement criteria are met and Rule H3 provides for an appeal. Removal would avoid any confusion about the relationship between entitlement to a pension and continued employment. There is no comparable provision in the NFPS.

B1	(2)(b) requires chief officer to have permission of FRA to retire before age 55.	Not appropriate to a pension scheme. This is a matter for the contract of employment.
B5B	(5)(b) reference to deferred pension	The reference should be to a deferred pension under B5, not B3.
B6	Repayment of aggregate pension contributions.	B6(3) duplicates LA1(3) and may be deleted.
D5	(3) limits payments to persons who have not attained the age of 17 unless they are disabled or in full time education.	The NFPS provides for payments to persons who have not attained the age of 18 in line with the definition of a child in tax legislation.
F8	Provides for transfer value payments to be made between FRAs where a firefighter transfers from an English FRA to either a Welsh or Scottish FRA.	The Northern Ireland Fire Authority should be included in the rule.
F7	(2) places a time limit of 12 months on written requests for a transfer value to be accepted.	The 12 month limit applied to club transfers only (as per NFPS). Transfers from non-club occupational pension schemes must be made in writing before the beginning of the period of one year ending with the date on which the member reaches normal retirement age. The provisions applying to club transfers were more restrictive because of the favourable terms offered by the club rules.
G1	(2) applies the earnings cap for those paying contributions after 31st May 1989	The earnings cap legislation (s. 590c of the ICTA) has been repealed but the cap preserved by the Modification of the Rules of Existing Schemes Regulations 2006 (SI 2006/No 364) until

		2010/11. The mechanism for annual increases will need to be inserted as the Treasury will cease issuing the annual figure.
G1	7(C) Provides for CPD to be disregarded for average pensionable pay purposes.	The reference to “any additional pension benefit” should actually be to “any CPD allowance”. CPD is paid as an APB and it is the actual allowance that has to be disregarded for APP purposes.
G3	(5) allows a person who has elected to opt out to cancel the election and resume payment of contributions under (1).	The FPS is now a closed scheme and the provision has been made redundant by the amendment of Rule A3(5) by the Firefighters’ Pension Scheme (Amendment)(England) Order 2006. (5) to (8) are no longer required. A person cannot cancel an election.
Part H	New rule required providing for review of medical opinion similar to Part 8 rule 3 of the NFPS	Insert rule providing for an IQMP to review an opinion in the light of new evidence..
H3	Appeal to Crown Court.-	No longer required. Appeal would be to Ombudsman who will need to be satisfied that internal resolution procedures have been followed.
K4	Only gives a discretion on abatement if the person is re-employed as a firefighter.	Provision should follow Treasury guidance. In-service abatement should apply to re-employment in any capacity by any fire and rescue authority. Inter-service abatement (i.e., up to NPA of relevant scheme) should apply to re-employment with any public service employer.
L4	(3) reference to rule L4B to be omitted.	Rule was removed to the FCS.
Schedule 8, Part 1	References to “normal pension age” are unnecessary.	The table gives the split at which the % values change

		because of the “protected” normal pension age” for the purchase of additional benefits. References to “normal pension age” therefore can be replaced by references to role.
--	--	---