

Portfolio Holder - Community Safety 21 October 2011

Response to Consultation on Proposed Changes to Firefighters' Pension Schemes

Recommendations

The Portfolio Holder is asked to:

- a) Consider and agree the responses set out by the HR Business Partner; and
- b) Task the HR Business Partner to respond on behalf of the Fire Authority.

1.0 Purpose of the Report

This report provides the draft response from the Fire Authority to the consultation exercise on the proposed changes to the Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006).

This consultation exercise commenced on 3rd August 2011 and ends at 5pm on 26th October 2011.

Background

The Government is consulting on a number of changes to the Firefighters' pension schemes for England. The consultation arises from the report by Lord Hutton, which recommended wide ranging changes to Local Government pension provisions, to make them more affordable and fairer to middle and lower paid staff.

This consultation is separate from change to contribution rates, which are also proposed by the Government within a separate consultation document.

The consultation seeks views on the following key proposed changes to the Firefighters' pension schemes:

- 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 potential age discrimination.
- Amendments to the medical and non-medical appeals processes.
- Abatement of pensions.
- Technical amendments and alignment with tax legislation.

This consultation applies to England only.

2.0 Issues

2.1 Rule A14

To consider the continued need for Rule A14 of the Firefighters' Pension Scheme (1992), given that the means to compulsorily remove any employee from employment should be undertaken under existing employment law.

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.

Government policy is to prevent age being a consideration for compulsory retirement or redundancy.

In addition, the Employment Rights Act is also being amended to mean that retirement will no longer be a fair reason for dismissal.

Proposal

The proposal, in paragraph 1(b) of the draft Order, is to revoke Rule A14 so that, in future, any decision to compulsorily remove a firefighter from employment is dealt with in accordance with employment and equalities law.

Proposed Response

This Authority agrees that there are better means to reduce workforce numbers that do not discriminate on the basis of age.

2.2 Firefighters' Pension Scheme (1992) Rules B5B and B5C

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

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)

The Government has used the Consumer Price Index (CPI) for the price indexation of benefits and tax credits since April 2011.

They believe that the CPI provides a more appropriate measure of benefit and pension recipients; inflation experiences than the Retail Price Index (RPI), because the CPI excludes the majority of housing costs faced by these homeowners, e.g. the exclusion of mortgage costs.

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.

Proposal

CPI 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 11th April 2011.

Proposed Response

This Authority understands that savings need to be made to the costs of pensions and that this move is in line with other public sector pension schemes.

2.3 Firefighters Pension Scheme (1992) Rule B7: Commutation - General Provision

This change, if implemented, will 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.

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. 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.

Proposal

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.

Proposed Response

We believe that this discretion should be given to fire and rescue authorities, especially as many will need to shed large numbers of staff to meet Grant cuts, whilst limiting compulsory redundancies.

2.4 Firefighters Pension Scheme (1992) Rule G1 - Pensionable pay and Average Pensionable Pay

This proposal is designed to ensure consistency in approach to, and proportionate arrangements for, the definition of pensionable pay for 'final salary' arrangements in the fire service schemes, especially in relation to how allowances and emoluments are dealt with.

Proposal

Following the outcome of policy consultation, the Department of Communities and Local Government (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."

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.

Proposed Response

This Authority agrees that staff pensions should not benefit individuals disproportionately in respect of temporary increases to pay or allowances, especially where these occur very close to retirement. However, we cannot agree that flexible duty allowance is a temporary allowance, especially where the consultation paper states that 'London weighting' is a permanent allowance.

2.5 Firefighters Pension Scheme (1992) Rule G3A: Exemption from Payment of Pension Contributions - 30 years Pensionable Service before Age 50 (Age Discrimination)

This proposal seeks 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

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. 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.

As staff cannot join the pension scheme until they are 18, the maximum pension payment holiday would be two years.

Proposal

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 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.

Under this proposal, the employing authority would need to continue to make contributions. The proposal is to be applied retrospectively to 1 December 2006 to meet equality legislation.

Proposed Response

We agree to the desire to remove any possible direct or indirect discrimination on the grounds of age.

If applied in the way proposed by the draft Scheme, we would expect Government to fund any retrospective payments through specific Grant.

2.6 Chief Fire Officers

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 above 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 24, may therefore contribute more than 30 years' service before being permitted to retire by their employer.

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. 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.

Proposed Response

This Authority is not clear why the role of Chief Fire Officer should be any different to any other operational role within the Firefighters Pension Scheme (1992).

Although no proposal has been put forward here, we would ask that the Scheme is simplified and allows all firefighters on the Scheme to have the same provisions for retirement, by removing the requirement to request retirement from Chief Fire Officers.

Modern HR practice and contracts of employment should enable fire authorities to manage retirements of Chief Fire Officers without separate rules imposed by Government.

2.7 Firefighters Pension Scheme (1992) Rule H1A Review of Medical Opinion (Medical Appeals)

This proposal seeks 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

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

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, if further medical evidence is provided by the Scheme member, so as to avoid unnecessary referrals to a Board of Medical Referees; paragraph 8(a) - new rule H1A (review of medical 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).

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.

Proposed Response

This Authority agrees to the change to current provisions.

2.8 Firefighters' Pension Scheme (1992) Rule H3: Appeals on Other Issues (Non-Medical Issues)

This proposal seeks to ensure that the appeal for a non-medical award claim, or payment, is undertaken through the appropriate mechanism.

Background

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.

Proposal

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.

Proposed Response

We agree with the proposal.

2.9 Firefighters' Pension Scheme (1992) Rule K4: Withdrawal of Pension during Service as Regular Firefighter (Abatement)

Background

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 re-employed in the public sector and receives a pension and salary, which exceeds their earnings before retirement.

At present, 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.

Proposal

Paragraph 12(c) sets out the Department's proposal to amend Rule K4 to expand the definition of re-employment, so that abatement of pension may apply to a member re-employed 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.

Proposed Response

Although this Authority agrees with the proposal, it must be ensured that the measures to apply it do not place too great an administrative burden on an authority but places such burdens on the employee seeking re-employment (proof of previous employment and pension etc) with appropriate sanctions for non disclosure.

2.10 Pensions Tax

Background

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 dependants' pensions.

Proposal

The draft instrument amends scheme terminology to be consistent with Her Majesty's Revenue and Customs' rules and definitions, as set out in The Finance Act 2004. These are minor changes requiring no response from this Authority.

There are, in addition, a number of minor changes that will take place due to any agreed changes mentioned in this paper, which again require this Authority's response.

Legal Comment

This paper is comment on a legislative Bill.

3.0 Timescales associated with the decision/Next steps

The consultation closes at 5.00pm on 26th October 2011, therefore the Fire Authority will need to submit a response before this date.

Background Papers (Please list below, with electronic links where applicable)

The complete draft Order can be found at:

<http://www.legislation.gov.uk/ukxi/2006/1810/contents/made>

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