



Department for
Communities and
Local Government

Firefighters' Pension Scheme (1992) and New Firefighters' Pension Scheme (2006)

An equality assessment of the amendments to both
firefighter pension schemes

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| <p>1. Name of Directorate</p> |
| <p>Local Government Finance – Workforce, Pay and Pensions</p> |
| <p>2. Please list all the policy streams in your business area.</p> |
| <p>In August 2011, the Department consulted on a number of proposed changes to the Firefighters' Pension Scheme and New Firefighters' Pension Scheme.</p> <p>The key proposals included:</p> <ul style="list-style-type: none"> • 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 potential age discrimination; • changes to the definition of pensionable pay; • amendments to the medical and non-medical appeals processes; • abatement of pensions; and • technical amendments and alignments with tax legislation. |
| <p>3. Identify any policy streams aimed at or impacting upon a Protected Group.</p> |
| <p>We have considered the impact of each proposal on the following characteristics:</p> <ul style="list-style-type: none"> • Age • Disability • Pregnancy and maternity; • Gender • Race/Ethnic Minority; • Gender reassignment • Sexual Orientation • Religion or belief • Marriage & Civil Partnership <p>Removal of rule A14, compulsory retirement on the grounds of efficiency</p> <p><u>Objective - To consider the need for rule A14 of the 1992 Scheme given that the means to remove any employee from employment is already available in employment law.</u></p> <p>At present, rule A14 allows fire authorities the discretion to require a member of staff to retire on the grounds of efficiency within the terms of the pension scheme,</p> |

provided they have reached the age of 50 and served 25 years as a firefighter. The removal of rule A14 will not prevent a fire and rescue authority from making decisions to retire or remove a member of the 1992 Scheme from service in accordance with the terms of the member's contract of employment. Fire and rescue authorities when making employment decisions will need to consider the equalities impacts of the decisions taken.

The Department is not aware of any evidence that would suggest the policy would have an adverse impact on the protected characteristics for any particular group of people and no consultation responses raised any equality concerns.

It is the view of the Department that the proposal promotes equality by removing rule A14, which only applies to members of a certain age or length of service.

Changes to the indexation of additional pension benefits

Objective - To bring the up-rating of additional pension benefit in line with the Pensions (Increase) Act 1971, to be consistent with the Government's preferred measure of inflation, as is the case for all pensions in payment and those deferred awards held under both the 1992 and 2006 Firefighters' pension schemes to which the 1971 Act applies.

In June 2010, the Government announced its decision to use the Consumer Prices Index rather than the Retail Prices Index as the general measure of inflation for up-rating social security benefits, state pensions and public sector pensions. This is set annually under the *Pensions (Increase) Act 1971*. It is the view of the Government that the Consumer Prices Index represents a more appropriate measure of inflation than the Retail Prices Index as it follows a common European Union methodology to measure price levels and is the index used by the Bank of England to measure inflation. This policy is a matter for Her Majesty's Treasury, and, as such, is not subject to the consultation on proposed amendments to Firefighters' Pension Scheme or considered as part of this assessment.

The current additional pension benefit arrangements for both firefighter pension schemes provide a pension based on a member's contributions paid on the Continual Professional Development allowance and the now discontinued Long Service Increment earned by a member. The Continual Professional Development allowance is currently paid to firefighters employed up to and including the role of Area Manger. The Long Service Increment, which was previously paid to all firefighters with at least 15 years continuous service, was replaced with Continual Professional Development from July 2007. The pension scheme orders currently uprates these pensions in line with the retail prices index whilst a member remains in active service.

The proposed amendment applies to the additional pension benefits earned whilst the member remains in service and to each member that is entitled to these benefits. The amendment will affect all members equally.

No equality concerns were raised in any of the consultation responses.

Increase to the maximum commutation payment for members who retire before age 55 or before accruing 30 years' service

Objective - To provide fire and rescue authorities with the discretion to waive the 2.25 times pension commutation limit for members of the 1992 Scheme retiring early.

On retirement, members of the 1992 Scheme are able to commute a proportion of their pension for a lump sum payment. Any member who has accrued maximum pensionable service (30 years) or who has attained the Normal Pension Age (55 years) is able to commute up to a quarter of their annual pension. For any member who has not reached the Normal Pension Age or who has less than 30 years' pensionable service, they are currently restricted to a lump sum of 2.25 times the member's annual pension.

The proposal enables an employer to waive this restriction and allow members to commute up to a quarter of their annual pension when retiring. The proposal will only apply to those members of the 1992 Scheme whose employer offers it and does not compel any member to take up the option. Therefore in cases where the employer has exercised its discretion it offers a greater choice for the individual.

The proposal is available equally to all Fire and Rescue Authorities. As the provision is only available to members of the 1992 Scheme, it is more likely to affect males. However, this is a consequence of the makeup of the scheme's membership, which has a 97% male representation.

One respondent to the consultation suggested that the proposal could potentially lead to discrimination if only some employers decided to exercise the discretion. The Department does not accept that the proposal discriminates against any group of workers with protected characteristics. It is the Department's view that if an employer chose not to exercise this discretion, it should not place any group of employees at a particular disadvantage as long as the authority has considered the equalities matters associated within that employer's workforce.

Proposals to amend the definition of pensionable pay

Objective - 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.

Following concerns raised in 2009 about fire and rescue authorities' interpretation of pensionable pay, the Department identified and consulted on two potential options with the Firefighters' Pension Committee to address the issue. The concern was that temporary allowances and emoluments were being treated as pensionable pay and therefore the Department agreed on an approach to ensure a consistent and proportionate approach was taken in relation to the "final salary" element of pensionable pay.

The proposal is to amend the definition of pensionable pay so that only permanent elements of pay are treated as pensionable under final salary arrangements, and that authorities are able to adopt Additional Pension Benefit arrangements for the treatment of other temporary allowances/emoluments. The policy intention is to reduce the financial risks associated with unfunded past service costs being generated in cases where a member receives a temporary allowance close to retirement. The Department also stated at that time that the flexible duty allowance was temporary and should not be included as pensionable pay. The use of Additional Pension Benefit for these arrangements will provide a fairer approach to financing pensions for the taxpayer, but also provide protection for members who lose their temporary allowances close to retirement and are not able to take them into account in their final salary calculations.

The proposal sought to introduce this amendment prospectively from the date that the amendment legislation was made. The proposal also sought to protect those who were already in receipt of a temporary allowance/emolument which was being treated as pensionable directly prior to the amendment being made so that it would continue to be regarded as pensionable under final salary arrangements.

The Department has amended its original proposals so that the flexible duty allowance should continue to be pensionable under pensionable pay (and therefore final salary arrangements).

Two respondents to the consultation expressed views that the transitional arrangements would lead to a two tier workforce and would, therefore, create discrimination on the basis of age. Temporary allowances are available to any eligible individual who should be entitled to receive that allowance. These allowances are not made available on the basis of age, but usually based on the role, skills or experience of that individual. Whilst individuals that are older will be more likely to have additional skills or experience, not all older individuals are in receipt of a particular allowance and not all younger individuals are excluded from being in receipt of that allowance. Therefore it is not possible to identify any current group of employees with protected characteristics that will be disproportionately affected by the protection afforded to current recipients of those allowances. The phasing out of the pensionability of this type of allowance will mean that some members in receipt of these allowances will have their pension calculated differently in respect of that allowance. However, that does not make the proposals discriminatory against any group with a specific protected characteristic.

Age discrimination - contributions holiday proposals to address potential age discrimination

Objective - To ensure that members who joined the 1992 Scheme before the age of 20 do not suffer any unlawful discrimination during the period between accruing full pension entitlement and reaching Scheme retirement age.

To maintain their scheme membership, members of the 1992 Scheme are required to pay employee contributions on the pensionable pay earned during their service. For any member who joined prior to their 20th birthday, this can mean that they will have to pay employee contributions beyond the point where

they have accrued the maximum 30 years service, and, therefore, maximum pension, before they first become eligible to retire with their pension at age 50 years. Some members of the 1992 Scheme have claimed that this means that they are being discriminated against on the grounds of age as they have no option to retire at the point they have accrued maximum pension benefits. Some members have also claimed that, in the specific case of Chief Fire Officers, the discrimination continues until age 55, as they may only retire before age 55 with the permission of the authority. These points were reinforced by respondents to the consultation.

The Department explained that the objective of the proposal was to ensure that those members who joined the 1992 Scheme prior to their 20th birthday did not suffer any potential indirect discrimination as a result of not being able to retire under the terms of the scheme at the point of accruing maximum service.

The Department's view, which was set out in that consultation paper, was that the requirement to pay contributions beyond the accrual of 30 years prior to the attainment of age 50 years is not itself discriminatory; although there may be scope for potential indirect discrimination given members who accrue maximum service prior to age 50 years do not have any discretion to retire.

Following consultation, the Department further considered the legal position and has now concluded that it does not believe that the matter is indirectly discriminatory. It also concluded that even if it were indirectly discriminatory, the Department is able to objectively justify that discrimination.

The proposal to provide a contributions holiday was based on a particular understanding of its legal obligations under equalities legislation, rather than being a specific Departmental policy objective. The policy objective is to ensure that the scheme is not discriminatory on the grounds of age.

The Department's view, which was also set out in the consultation paper, is that the requirement for Chief Fire Officers to continue paying contributions beyond the point of accruing 30 years service was not discriminatory. The consultation did recognise that the matter was complicated as due to the changes brought in by the Finance Act 2004 some Chief Fire Officers do not have a protected pension age of 50 under the terms of that Act and, therefore, if they retire before age 55 years, they will need to pay a tax charge.

The Department has now considered the legal position further and in order to provide certainty on the legal position, the Department now proposes to seek a declaration from the Courts. If the Courts determine that the current position is unlawfully discriminatory, then the Department will proceed to implement the proposed contributions holiday. If the Court finds that the current position is not discriminatory, or is discriminatory but can be objectively justified, then the Department would consider that the question of discrimination is settled, and the proposed contributions holiday would not be implemented. The Department's view is that by seeking a declaration from the court, it will ensure that it complies with its obligations under equalities legislation.

Amendments to the medical appeals process

Objective - To improve the efficiency of the medical appeals process by providing Independent Qualified Medical Practitioners and the Board of Medical Referees with the power to review previous decisions where further medical evidence is presented.

The Department set out that the objective of these proposals was to make the medical appeals process more efficient and easier for all parties to pursue. The consultation proposed to bring the medical appeals process in the 1992 Scheme in line with that followed under the 2006 Scheme. Since the 2006 Scheme came into effect, the Department has not been notified of any incidences of potential discrimination arising as a result of the appeals process. There are two further sets of amendments. The first enables the correction of an error of fact made by the board of medical referees where this has been agreed by the authority and the appellant. The second set of amendments increase the grounds on which the authority may require the appellant to pay the costs of the appeal. No consultation responses raised any equality concerns.

It is reasonable to assume that the proposal will apply equally to all firefighter members and, therefore, it is the Department's view that the proposal will not disproportionately affect any one group of employees.

Amendments to the non-medical appeals process

Objective - To ensure that the appeal for a non-medical award or payment is undertaken through the most appropriate mechanism.

The 1992 Scheme currently requires an appeal to the Crown Court in cases where an authority does not admit a person's claim to an award or payment in respect of an award. As Schemes are now required under pension's legislation to have an internal dispute resolution arrangement in place an appeal to the Crown Court is no longer the most appropriate mechanism for resolving disputes.

The proposals intend to bring the process for an appeal on a non-medical issue in line with the existing practice and with pension's legislation.

No equality concerns were raised in any of the consultation responses.

It is reasonable to assume that the proposal will apply equally to all firefighter members and, therefore, it is the Department's view that the proposal will not disproportionately affect any one group of employees.

Withdrawal of pension whilst employed by a fire and rescue authority (abatement)

Objective – To extend the employer's discretion to abate the pension of a member of the 1992 Scheme. Also, to require the employer, responsible for paying the pension, to pay an amount equal to the pension that could have been abated in cases where it decides not to apply abatement.

The proposal brings the employer's discretion in the 1992 Scheme to abate a member's pension on re-employment into line with that provided by the 2006 Scheme so that the employer can decide to apply abatement to a 1992 Scheme member who is re-employed by any Fire and Rescue Authority in any capacity. The proposal also requires the employer to pay, into their pension fund, an amount equal to the amount of the pension that could have been abated, for cases where the employer decides not to exercise the discretion to abate in both the 1992 and 2006 Schemes.

The Department notified employers of the intention to introduce the proposed amendment on 25 September 2009. Sixteen consultation responses suggested that the application of the proposal would unfairly impact on those 1992 scheme members that had already retired and been re-employed by a fire and rescue authority prior to that date. The suggestion was that the proposal discriminated on the grounds of age.

The Department has made some changes to its original proposals as a result of consultation. Firstly, the Department intends to apply the amended abatement definition retrospectively from 25 September 2009. Secondly, the proposal to make employers liable for the associated costs where they do not apply abatement will only apply to pensioner members who are re-employed after the date the legislation comes into force.

Also, whilst it is the Department's view that employers should demonstrate value for the taxpayers' money, the application of the amended abatement provision remains a discretion and there will be no financial cost to those employers who decide against exercising their discretion to abate the pensions of those members who had already been re-employed prior to the date on which the amendment order comes into force. Whilst employers will have greater ability to abate a pension retrospectively to 2009, it is not envisaged that employers would choose to use the power retrospectively. However, the provision is needed where some employers have been abating a member's pension in accordance with Government policy since 2009.

The proposal is likely to have greater impact on those firefighters who retire after the proposal comes into effect and, as such may not have an opportunity in the future to receive an unabated pension if re-employed following retirement. However, the provisions are needed to implement long standing Government policy, which is that members should have their pension abated if they are re-employed in the public service. Whilst members will be affected differently depending on whether they have retired or not, the Department's view is that the proposal does not directly discriminate on the grounds of age. The Department recognises that employers will need to consider the equality impacts when electing to exercise the proposed discretion.

Pensions tax – alignment with tax legislation

Objective - 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. The proposals seek to amend the scheme terminology to be consistent

with HM Revenue and Customs' rules and definitions, as set out in the Finance Act 2004.

This proposal aims to reflect terminology present in existing primary legislation and, as such, does not constitute new policy.

Technical amendments, including the updating of statutory references

Objective - 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.

This proposal aims to update the Scheme rules to reflect current legislation, rather than implement a new policy.

4. Who has responsibility for developing these policies?

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5. Are there any EU or other statutory regulations that need to be adhered to regarding equalities?

Equality Act 2010 and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

6. The following summary will be analysed and used as evidence which you considered in demonstrating due regard to the Public Sector Equality Duty. Have you used information from any of the following sources when developing policies?

Links to new/existing reports –

The Emergency Budget 2010 announced the Government's intention to switch the index linking of public service pensions from the current basis of RPI to the CPI.

Extracts from consultation responses and any follow up with respondents –

The Department has received substantial correspondence relating to the proposed amendments and which have been summarised in the Government response to the consultation. The Government response can be found at the following weblink:

<https://www.gov.uk/government/consultations/firefighters-pension-scheme>.

Minutes of meetings/Notes from stakeholder workshops where equality considerations were addressed/discussed (remember to capture the names of participants –

Discussions on the equality aspects of the proposal to amend the definition of pensionable pay were recorded on the:

- Note of the 32nd meeting of the Firefighters' Pension Committee;
- Note of the 34th meeting of the Firefighters' Pension Committee;

7. Have you discovered any of the following and as a consequence taken actions on identified equality issues?

Proposal to introduce a contributions holiday - On reconsidering its initial position, the Department will now take steps to seek a declaration from the Courts to determine whether the 1992 Scheme order currently discriminates against its members by requiring them to pay contributions beyond the point where they accrue maximum pension prior to their 50th birthday. The Department will comply with the any final determination in these proceedings.

8. When your policies are finally implemented which groups are most likely to benefit?

The various policy proposed amendments to the 1992 and 2006 Schemes will affect different groups depending each specific proposal. We have not identified any group which is likely to be advantaged or disadvantaged more than another.

9. In considering the above information have any gaps in data or equalities information been identified?

The Department is not aware of any relevant data or equalities gaps that would be relevant to the proposals.

10. Overall, can you make an assessment of the potential of this policy; programme/service to have a substantial equalities impact on discrimination, fostering good relations or advancing equality of opportunity? Please try to limit your answer here to less than an A4 page.

The policies will, overall, seek to promote equality, in particular by removing rule A14 and resolving the contributions holiday by seeking a declaration from the Courts. However, some respondents to the consultation claimed that some of the proposals discriminate on the grounds of age because they provide protections to members already in receipt of some pension benefits (such as abatement, and changes to the definition of pensionable pay), or will not have certain provisions applied to them and therefore they will be treated differently to prospective members or retirees. .

Whenever a new policy is introduced, the effect of that policy needs to be assessed with respect to different groups of individuals and the effect on them. It is likely when changes are introduced that these will benefit some individuals and not others. Such a cut off point is often unavoidable and the Department has provided careful consideration to each policy as to whether the proposal is discriminatory and can be objectively justified. Further detail on each specific policy consideration can be found above.

This analysis was undertaken by (name)
Advice sought from (Name of equality Champion or other Colleagues)

| | | | |
|-------------------------|------------------|---------------------|------------------|
| Name/Title | Hyacinth Parsons | | |
| Directorate/Unit | Equalities | Lead contact | Andrew Cornelius |
| Date | 1/3/2013 | Date | 3/3/2013 |

SCS Sign off Chris Megainey (Workforce, Pay and Pensions)

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

Please keep a record of this analysis for audit purposes and send a copy to errol.barnett@communities.gsi.gov.uk for his records