REPORT REFERENCE NO.	**HRMDC/18/26**
MEETING	**HUMAN RESOURCES MANAGEMENT & DEVELOPMENT COMMITTEE**
DATE OF MEETING	**3 JULY 2018**
SUBJECT OF REPORT	**PENSION DISCRETIONS – FIREFIGHTERS' PENSION SCHEME**
LEAD OFFICER	**Director of Finance (Treasurer)**
RECOMMENDATIONS	***That the Devon and Somerset Fire and Rescue Authority be recommended to approve the following changes to the Authority's Pensions Discretions Policy:*** ***(i) that the upper age for Injury Retirements medical reviews are aligned to that of Ill-health Retirements as set out at paragraphs 2.7 and 2.8 of this report; and*** ***(ii) that a Voluntary Schemes Pays arrangement is introduced for the payment of pension Annual Allowance tax liabilities, but applicable only in one (or both) of those circumstances as identified in paragraph 3.11 of this report.***
EXECUTIVE SUMMARY	The Authority is the Scheme Manager for the firefighters' pension schemes and any changes to pension arrangements require Authority approval. This paper details two such changes. The first proposed change being in relation to the upper age for Injury Retirement medical reviews. The second proposed change being for the payment of employees' pension tax liabilities through a 'Voluntary Scheme Pays' arrangement, whereby the employee has a reduction in the value of their pension benefits to cover the cost of any tax payments to HMRC.
RESOURCE IMPLICATIONS	Provided that the LGA guidance is followed in respect of expenditure on Voluntary Scheme Pays arrangements, costs will be met in full by the Home Office and will be reimbursed to the Authority via the Pension Top-Up Grant. Medical Reviews could result in changes to pension payments which for injury pensions are funded from the Service revenue budget.
EQUALITY RISK & BENEFITS ASSESSMENT	Given the reduction in the Annual Allowance, the potential increased tax liability faced by employees on promotion could dissuade individuals from applying for promotion. A Voluntary Scheme Pays arrangement would alleviate this problem to some extent with no financial risk to the Authority.
APPENDICES	A. Local Government Association Briefing Note 'Voluntary Scheme Pays' in the Firefighters' Pension Schemes.
LIST OF BACKGROUND PAPERS	Nil.

1. INTRODUCTION

1.1 The Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015 came into force on the 1st April 2015 and amended the Firefighters' Pension Scheme Regulations to create new governance provisions. These include the introduction of a Local Pension Board and clarification that Devon & Somerset Fire & Rescue Authority is the Scheme Manager for the Firefighters' Pension Schemes. Any key changes to the allowable discretions regarding pension arrangements need to be approved by the Authority; this paper details two such changes.

1.2 The first change is in relation to the upper age for Injury Retirement medical reviews. This is where an operational firefighter has had an injury whilst on duty and it is recognised as a qualifying injury under the Firefighters' Compensation Scheme. This will result in the firefighter retiring early. In such cases, the firefighter will then be subject to periodic medical reviews following retirement to determine whether the degree of disablement has altered substantially or the disablement from the qualifying injury has ceased. If the degree of disablement has altered substantially, then the award is adjusted accordingly. If the disablement has ceased then the pension is stopped. The reviews should take place at defined intervals up to an upper age limit which the Authority should determine. In addition to Injury Retirement medical reviews there are also Ill-health Retirement reviews, for which the upper age is set out within the various Firefighter Pension Schemes. This report is proposing that the upper age limit for Injury Retirement medical reviews is aligned to that of Ill-health Retirement medical reviews.

1.3 The second proposed change is in relation to the pension Annual Allowance, which sets a maximum level that an individual's pension benefits can increase each year before incurring a personal tax liability. Where this limit is exceeded, an employee may pay the resultant tax liability through their pension scheme, the costs being recovered through reduced pension benefits. This is referred to as the Mandatory Scheme Pays provision. However, there are circumstances where the Mandatory Scheme Pays provision does not apply and in these circumstances a Voluntary Pay Schemes policy can be applied in the same way, if agreed by the Authority as the Scheme Manager.

2. INJURY RETIREMENTS

2.1 The Authority has previously undertaken an exercise with the National Fraud Initiative in relation to reviewing such cases where an injury award had been paid. This was necessary as nationally, it was found that some pensioners were receiving state benefits as well as a firefighter's injury award. If this was the case then the pensioner was required to inform the fire and rescue authority and an adjustment would then be made to the injury pension which was paid.

2.2 The matter of Injury Retirements was raised during an audit of Peninsula Pensions (which provides daily administration of the firefighters pensions schemes on behalf of the Authority) undertaken for the Authority by the Devon Audit Partnership (DAP). DAP considered a number of specific areas and found that Injury retirements was an area requiring improvement. DAP's concern was that the listing held by the Service did not in every case state when the next review was due to take place.

2.3 As a separate matter, the review period has also been raised by the Fire Brigades Union (FBU), the Retained Firefighters Union (RFU) and also by an existing pensioner with legal representation. Each of these parties believe the Authority is continuing to review injury cases beyond the required period.

2.4 Injury Retirements are as a result of an injury on duty which is considered as a qualifying injury. The Authority has previously established that for injury pensioners the medical review should be on the second and fifth anniversary of the injury retirement and then every five years up to their 65th birthday, unless more regular re-examination periods are recommended by an Independent Qualified Medical Practitioner (IQMP). This decision was made in August 2010 when the Authority was responding to the requirements of the National Fraud Initiative.

2.5 Within the Authority's Firefighters' Pensions Discretions Policy, a range of pension legislation is referred to in relation to the 'Discretions on awards, associated review periods and adjustments'. However, an upper age for Injury Retirement medical reviews is not stipulated.

2.6 The Firefighters' Compensation Scheme sets out that a fire and rescue authority will periodically review injury awards occasioned by a qualifying injury to consider whether the degree of disablement has substantially altered or the disablement has ceased. The reviews should take place at intervals determined by the authority, which also has a discretion to decide that a particular case need not be reviewed if five years have passed since the injury award first became payable. If the degree of disablement has altered substantially, then the award is adjusted accordingly. If the disablement has ceased then the pension is stopped. In addition to Injury Retirement medical reviews there are also Ill-health Retirement medical reviews.

2.7 Ill-health Retirement medical reviews are dependent on a maximum review period of up to 10 years after retirement with the Authority having the discretion to review at intervals as appropriate. The Authority's position is that such ill-health medical reviews are at periods recommended by the IQMP.

2.8 The reviews also have a maximum age that is specific to the scheme:

- for the 1992 Scheme it is age 60;
- for the 2006 Scheme it is state pensionable age; and
- for the 2015 Scheme it is state pensionable age.

2.9 Currently, Injury Retirement medical reviews can continue beyond normal retirement age (eg for the FPS 1992) which can cause significant stress to the pensioner and creates additional work for the Service that is considered to be unnecessary. Consequently, is proposed that the age limits for Injury Retirement medical reviews are aligned to the same age limits for Ill-health Retirements, which are set by the relevant pension scheme regulations. Within these age limits, Injury Retirement medical reviews would continue to be undertaken at periods recommended by the IQMP. The maximum review period of 10 years which is used for Ill-health medical reviews would not be applied to Injury medical reviews.

3. VOLUNTARY SCHEME PAYS

Introduction – Annual Allowance and Annual Allowance Tax Charge

3.1 The Annual Allowance is the maximum amount of tax exempt pension savings, from all registered pension arrangements, that can be built up in one tax year. Tax is usually paid if savings in the individual's pension increase by more than the Annual Allowance, currently £40,000 a year (reduced over the last six years from an initial £255,000).

3.2 Any increase in value of pension and lump above the Annual Allowance is subject to the Annual Allowance tax charge. The Annual Allowance tax charge will be at the individual's highest rate of tax. In a defined benefit scheme, such as the Firefighter's pension scheme, the increase in the value of the retirement benefits each year is used to calculate how much of the annual allowance the scheme uses. The calculation is complex, taking the opening value, the closing value and then the difference between the two amounts.

3.3 The way the Annual Allowance calculation works means that even a middle earning employee who receives a significant promotion or pay rise has the potential to be affected by the Annual Allowance tax liability.

Mandatory Scheme Pays

3.4 An individual so affected by the Annual Allowance tax liability can choose to pay the tax charge from their own personal finances. The Finance Act 2004 provides, however, that a pension scheme must provide a "Scheme Pays" facility (where the scheme pays the tax charge and recovers this amount from reduced pension benefits to the individual) subject to the following conditions being met:

- the Annual Allowance limit (currently £40,000) has been exceeded; and
- an Annual Allowance tax charge exceeding £2,000 has been triggered; and
- the individual concerned has elected for the Scheme Pays facility within relevant timescales.

This is referred to as "Mandatory Scheme Pays" (MSP) and has been used with the firefighters' pension schemes since 2012.

Voluntary Scheme Pays

3.5 Recent changes to taxation rules mean that some high-earning members with an income in excess of £150,000 per annum are now subject to a Tapered Annual Allowance. This reduces from £40,000 to £10,000 incrementally for those earning between £150,000 and £210,000 per annum. Members who are subject to a Tapered Annual Allowance will incur an Annual Allowance tax charge where their pension growth exceeds their Tapered Annual Allowance. As a result of the condition identified at paragraph 3.4(a) above, however, any member who has a Tapered Annual Allowance of less than the £40,000 Annual Allowance limit cannot use the Mandatory Scheme Pays provisions for payment of the resultant tax charge.

3.6 The relevance of this is that, with the introduction of the 2015 Firefighters' Pension Scheme ("the 2015 Scheme"), any member of the 1992 Firefighters Pension Scheme and the 2006 Firefighters' Pensions Scheme who has transferred into the 2015 Scheme on or after 1 April 2015 will be, effectively, members of two pension schemes and will see pension benefit growth in both schemes until retirement. By virtue of this accruing pension growth across two rather than one pension scheme, there is an increased likelihood for some members that their total annual pension growth will exceed the £40,000 Annual Allowance limit, thereby making them subject to the Tapering Annual Allowance. Where the Tapered Annual Allowance is less than the £40,000 Annual Allowance limit, the member concerned cannot use the Mandatory Scheme Pays provisions to meet the resultant tax charge.

3.7 Where a member does not meet the conditions for Mandatory Scheme Pays to apply a scheme may determine to pay the members taxation charge on a voluntary basis – referred to as Voluntary Scheme Pays. At a meeting in March 2017 the Firefighters Scheme Advisory Board considered and agreed a proposal from the Home Office to amend Firefighter Pension Regulations to allow for Voluntary Scheme Pays to apply in certain circumstances. This is, though, only a proposal at this stage and still requires legislative change.

3.8 In the interim, it is for fire and rescue authorities to consider their approach to this issue, ensuring that what they do is both lawful and appropriate. To this end, the Local Government Association has commissioned legal advice on whether fire and rescue authorities may lawfully and appropriately offer Voluntary Scheme Pays without an amendment to the Firefighter Pension Regulations. This legal advice is contained in the briefing note produced by the Local Government Association and attached as Appendix A to this report.

Summary of LGA Legal Advice

3.9 The legal advice indicates that, to operate Voluntary Scheme Pays, there are two different steps:

1. Firstly, the Authority needs to pay the annual allowance charge to HMRC on behalf of the scheme member; and
2. the Authority then adjusts the member's benefit to reflect this payment.

3.10 The legal advice is that the Authority can undertake (1) above by virtue of the general power of competence, inserted as Section 5 of the Fire & Rescue Services Act 2004 by Section 9 of the Localism Act 2011. The legal advice also indicates that the Registered Pension Schemes (Modification of Scheme Rules) Regulations 2001 allow for (2) i.e. for the Authority, as Scheme Administrator, to recover from a scheme member any annual allowance charge paid by the Authority to HMRC on behalf of that member.

3.11 The advice also indicates, however, that the power of general competence must be exercised reasonably and that this would be reasonable in the following circumstances (as proposed by the Home Office and agreed by the Scheme Advisory Board):

- where access to the Voluntary Scheme Pays arrangement for transitional members with service in one of the 1992 or 2006 Schemes and the 2015 Scheme would be the same as the access a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, would have to the Mandatory Scheme Pays arrangement; or where access to the Voluntary Scheme Pays arrangement is afforded to those Scheme members where the pension growth in one or more schemes is more than their own tapered Annual Allowance limit but less than the £40,000 Annual Allowance

3.12 The legal advice goes on to state that any fire and rescue authority wishing to make a Voluntary Scheme Pays arrangement for reasons other than the two listed at paragraph 3.11 above should consider whether to do so would represent a reasonable exercise of its powers.

3.13 Firefighter's pension costs, excluding Injury on Duty and Ill Health Pensions which are funded by the Authority, are reimbursed annually via a Top Up Grant from the Home Office. Therefore, there will be no cost to the Authority of implementing the Voluntary Scheme Pays Policy.

Proposal

3.14 Given the legal advice as set out above, it is proposed that the Authority should introduce a Voluntary Scheme Pays arrangement but applicable only in one (or both) of the two circumstances as identified in paragraph 3.11 above.

CONCLUSION

4.1 This report deals with two issues relating to the administration of Firefighters Pensions Schemes. The first addresses a proposal, stemming from an audit undertaken by the Devon Audit Partnership, to harmonise the upper age limits for medical reviews to be undertaken for both Injury and Ill-Health Retirements.

4.2 The second issue deals with the introduction of a Voluntary Scheme Pays arrangement. The question of whether a fire and rescue authority has the power to introduce such an arrangement has been the subject of legal advice commissioned by the Local Government Association. Provided that the LGA guidance is followed, then the Authority should have the powers to introduce such an arrangement, with any subsequent costs incurred being reimbursed to the Authority by the Home Office via the Pension Top-Up Grant.

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