

## **Retained Firefighters' Pensions**

### **Purpose of report**

For discussion and direction.

### **Summary**

This report sets out the latest position on the financial implications arising from the Employment Tribunal judgement (case number: 6100000/21) which provides for backdated access to the Firefighters' Pension Scheme for retained firefighters.

### **Recommendations**

Members are asked to:

1. consider the financial implications, arising from the Employment Tribunal, which are set out in **paragraphs 7 to 11**; and
2. note the actions that are being taken by FSMC to identify the responsibility for and mitigate the risks of the financial costs.

### **Action**

Officers to take forward actions.

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## **Retained Firefighters' Pensions**

### **Background**

1. DCLG has been negotiating a settlement with the Fire Brigades Union (FBU) on retained firefighters' pensions, in line with the outcome of the Employment Tribunal, which grants retrospective access to the Firefighters' Pension Scheme. We understand that these negotiations are at an advanced stage and that DCLG will be bringing forward a consultation shortly.
2. The proposal is that all firefighters with retained service between 1 July 2000 and 5 April 2006 inclusive will be eligible for special membership of the New Firefighters Pension Scheme 2006.
3. The New Firefighters' Pension Scheme 2006 will be amended to give effect to the agreement when reached. There will be consultation in accordance with the requirements of section 34 of the Fire and Rescue Services Act 2004. The amending order will be subject to agreement by ministers and parliamentary approval.
4. Fire authorities have not been party to the negotiations over the settlement that will inform the amendment order.
5. DCLG expects to consult on the amending order in July/August 2012. The consultation period will be 12 weeks. The implications are that the legislation will not come into effect until the new-year.
6. The Fire Service Management Committee met on 14 May 2012 and agreed to seek legal advice on the issue and to arrange a meeting with the Fire Minister Bob Neill MP.

### **The scale of the scheme liability**

7. A balance of scheme liability (cost to the scheme minus the employees' contribution) will emerge as retained firefighters take up the option to buy back service. The scheme liability could begin to emerge in 2013-14 financial year.
8. The actual scale of the scheme liability will not be known until we know how many retained firefighters take up the option. The Government Actuary Service (GAD) has estimated that the total number of eligible retained staff is 21,200. This figure is arrived at by adding the stock of retained firefighters between 1 July 2000 and 5 April 2006, which was a constant figure of around 14,000 with an estimate of the number of retained firefighters who left the service during that period and who, therefore, would also be eligible to buy-back pensionable service.

9. GAD estimates that the balance of scheme liability will be about £5 million for every 1 per cent of eligible retained firefighters who take up the option. At this stage we cannot be definite on the actual costs to the scheme arising from the Employment Tribunal judgement. This will only be known when retained firefighters take up the scheme.
10. Table 1 gives an indication of the potential balance of scheme liability for various rates of take-up.

**Table 1: Indication of the potential balance of scheme liability**

| <b>Percentage take-up by retained firefighters</b> | <b>Estimated balance of scheme liability</b> |
|--|--|
| 10%  | £50 million                                  |
| 25%  | £125 million                                 |
| 50%  | £250 million                                 |
| 75%  | £375 million                                 |

11. The costs set out in Table 1 would imply an employer contribution rate of around 37 per cent if the costs were spread over 10 years. This is substantially higher than the current employer rate of 21.3 per cent. This is largely because of changes to financial assumptions since the valuation in 2007 and also because the expected profile of those taking up the option is unlikely be representative of scheme members as a whole:

### **Responsibility for the scheme liability**

12. Liability for the costs of the scheme will be disputed, but there is potentially a strong case indicating that government is liable.
13. The exclusion of retained firefighters has been a feature of relevant legislation up until the 2006 New Firefighters Pension. The firefighters' pension schemes are administered locally by individual fire authorities, but policy is set by central government. The Fire Pensions Committee, which has representation from the LGA and CFOA, has an advisory role and it is also the formal route for consultation, but these are government sponsored schemes and it is ministers that take the final decisions. FRAs were unable to allow retained staff to join the extant scheme and in a number of cases set up alternative pension arrangements for retained staff.
14. As stated above, fire authorities have not been party to the negotiations over the details of the settlement that will implement the Employment Tribunal's judgement. However, there are elements of any settlement that will be very important in determining the final take-up of the option to buy-back pensionable service, including the timescale for the option window and any measures that

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make it financially easier for those who are eligible to buy-back service. Employers have not been in a position to influence or assess the extent to which the details of the settlement include any enhancements over and above those absolutely necessary to implement the Employment Tribunal judgement. There will be a statutory consultation, but we are not clear that this provides employers with sufficient input into the final settlement.

15. The LGA is seeking legal advice on government's liability for the balance of scheme liability and also on whether it has been appropriate to exclude employers from the settlement agreement discussions.
16. A verbal update on the progress of the legal advice will be provided at the Fire Commission meeting on 15 June 2012.

**Risks if government seeks to pass on its cost to employers**

17. There are a number of issues that will need to be addressed if fire authorities are charged for the balance of the government's scheme liability. Principally, these are how the costs should be distributed across fire authorities and the timescale for covering the costs.
18. In terms of the distribution of costs across the sector, it is important to note that fire authorities use, and have used, retained staff to varying degrees. Currently 12 fire authorities account for over 50 per cent of the retained staff and some authorities do not have any retained staff (see **Appendix A**). If this pattern of employment is historically consistent, and individual fire authorities cover their own employer contributions arising from retained firefighters buying back service, the impact on some authorities will be much larger than others. Indeed under these circumstances the financial implications could be such as to adversely affect service delivery in some fire authorities.
19. The impact of the liability on individual fire authorities could be mitigated by measures that extend the period over which the costs are spread. Potential options for this include capitalisation of the costs or through future valuations the pension scheme—it is not unusual for scheme deficits to be managed over the long-term. The latter approach would in effect represent a pooling of the liability across all fire authorities.
20. More detailed analysis of the financial impacts on an authority by authority basis would be needed for FSMC to make an informed debate on the potential ways of dealing with the issue, should this ever be required. This will be especially important at a time when all fire and rescue services are facing significant financial challenges and the fundamental method for funding Fire and Rescue services is changing.

**Conclusion and next steps**

21. FSMC has asked for a meeting with the Fire Minister and a cross party delegation will meet with Bob Neill MP on 11 June 2012.
22. LGA officers are continuing to engage with officials at DCLG to refine our understanding of the financial implications arising from the Employment Tribunal finding and to establish credible options for mitigating these implications. We will continue to update FSMC on the outcome of these discussions.

**Financial Implications**

23. There are no immediate financial implications.

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**Appendix A: Retained Duty Staff by Fire Authority<sup>1</sup>**

|                              | Wholetime     | RDS           | % of all RDS |
|------------------------------|---------------|---------------|--------------|
| <b>ENGLAND</b>               | <b>29,062</b> | <b>12,140</b> |              |
| <b>Non-Metropolitan</b>      | <b>15,772</b> | <b>11,821</b> |              |
| Avon                         | 664           | 187           | 1.54         |
| Bedfordshire                 | 316           | 134           | 1.11         |
| Berkshire                    | 413           | 105           | 0.86         |
| Buckinghamshire              | 348           | 207           | 1.70         |
| Cambridgeshire               | 271           | 287           | 2.54         |
| Cheshire                     | 526           | 156           | 1.29         |
| Cleveland                    | 461           | 83            | 0.68         |
| Cornwall                     | 207           | 397           | 3.27         |
| Cumbria                      | 234           | 393           | 3.23         |
| Derbyshire                   | 429           | 227           | 1.87         |
| Devon & Somerset             | 706           | 1,147         | 9.44         |
| Dorset                       | 285           | 310           | 2.56         |
| Durham                       | 381           | 152           | 1.25         |
| East Sussex                  | 431           | 243           | 2.00         |
| Essex                        | 874           | 388           | 3.20         |
| Gloucestershire              | 216           | 247           | 2.04         |
| Hampshire                    | 776           | 588           | 4.84         |
| Hereford & Worcester         | 313           | 305           | 2.51         |
| Hertfordshire                | 570           | 199           | 1.64         |
| Humberside                   | 632           | 379           | 3.12         |
| Isle of Wight                | 76            | 119           | 1.00         |
| Kent                         | 838           | 714           | 5.88         |
| Lancashire                   | 829           | 307           | 2.53         |
| Leicestershire               | 458           | 196           | 1.61         |
| Lincolnshire                 | 222           | 454           | 3.74         |
| Norfolk                      | 289           | 481           | 3.96         |
| North Yorkshire              | 342           | 351           | 2.89         |
| Northamptonshire             | 298           | 269           | 2.22         |
| Northumberland               | 167           | 165           | 1.36         |
| Nottinghamshire              | 551           | 256           | 2.11         |
| Oxfordshire                  | 249           | 297           | 2.45         |
| Shropshire                   | 206           | 339           | 2.79         |
| Staffordshire                | 447           | 483           | 3.99         |
| Suffolk                      | 241           | 389           | 3.20         |
| Surrey                       | 641           | 103           | 0.85         |
| Warwickshire                 | 274           | 119           | 0.98         |
| West Sussex                  | 383           | 305           | 2.51         |
| Wiltshire                    | 199           | 303           | 2.49         |
| Isles of Scilly <sup>3</sup> | 11            | 39            | 0.32         |
| <b>Metropolitan</b>          | <b>13,290</b> | <b>319</b>    |              |
| Greater Manchester           | 1,813         | 27            | 0.22         |
| Merseyside                   | 885           | 71            | 0.58         |
| South Yorkshire              | 752           | 85            | 0.70         |

<sup>1</sup> Source: Appendices to the Fire and Rescue Service (FRS) Operational Statistics Bulletin for England: 2010/11, DCLG

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|                |       |     |      |
|----------------|-------|-----|------|
| Tyne & Wear    | 858   | 14  | 0.12 |
| West Midlands  | 1,788 | 0   | 0    |
| West Yorkshire | 1,411 | 122 | 1.00 |
| Greater London | 5,783 | 0   | 0    |

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