

30 May 2014

Pensions Update

Purpose

For discussion and direction.

Summary

This paper sets out the recommendations of the FSMC Pensions Working Group on the response to the Government's decision on the responsibilities for costs arising from the retrospective access for retained firefighters to the pension scheme.

Recommendation

Consider the recommendations of the Pensions working group set out in **paragraphs 11 to 13** and agree a formal position on the next steps.

Action

Officers will take action as directed.

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Background

1. Following new employment legislation in 2000, retained firefighters, supported by their unions, submitted an Employment Tribunal claim seeking equal treatment with whole-time regular firefighters. The 2008 Judgement gave retrospective access to retained firefighters to the Firefighters' Pension scheme for the period 1 July 2000 and 5 April 2006 inclusive (from 2006 retained firefighters had access to the Firefighters 2006 Pension Scheme).
2. A scheme liability will emerge as retained firefighters purchase past service rights and the employee contributions paid do not match the full liability created in the scheme. The scheme liability could begin to emerge in 2014-15 financial year. The actual scale of the scheme liability will not be known until we know how many retained firefighters take up the option. However, the Government Actuary's Department (GAD) has estimated (21 March 2012) 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. GAD estimates that there are 21,200 eligible retained firefighters, which means that the total cost could be as high as £500 million. It subsequently (January 2013) made a provisional estimate that the liability was likely to be between 1.8% and 2.1% (£250m - £300m) of the total paybill based on retained pension membership.
3. At its last meeting FSMC asked for the establishment of a Pensions working group to provide guidance to FSMC on the next steps to take following the government's publication of its response on its statutory consultation in regard to implementation of its agreement with the FBU; that response was published on 6 March 2014 and included its decision on the allocation of costs which is set out below.
4. The Working Group has met twice on 23 April 2014 and again on 9 May 2014.

Government's response to consultation on retained pensions

5. In its response to *Retained Firefighters' Pension Settlement: A consultation to provide access to a modified pension scheme*, the Government has argued that the Settlement, agreed with the unions, follows the introduction of new employment legislation in 2000, the part-time workers regulations, which apply equally to local authorities as to private sector bodies and that there is no change in, or an introduction of new, Government policy. As a result, it has decided that the existing Government policy, for unfunded public service pension schemes should be paid by employers and employees, and handled through periodic scheme valuations, remains unchanged. The Department has therefore concluded that any costs in relation to the Settlement do not constitute a 'new burden' as set out in the Department's New Burden's doctrine.

6. The Government has stated that the size of the scheme deficit will be established by valuations and will be recovered from employers over the long term, expected to be 15 years, through the employer contribution rate.
7. The Government has also said that an increase in the employer contribution rate arising from the Settlement, alongside other relevant matters, will form part of the Government's considerations for fire resources at the next Spending Review.
8. Prior to 2006, the pension funding arrangements were a "pay as you go" scheme. The actual payment and receipts for the scheme were made from revenue budgets, partly funded from the formula grant. The scheme since 2006 has required the employer to contribute a set percentage of pensionable pay with the employee and this income is used towards the in-year payments of scheme benefits. If this funding is insufficient to meet the costs of the pensions liabilities then a top up grant is received from the DCLG. If there is a surplus of income over expenditure this is surrendered to DCLG.

Pensions Working Group considerations and recommendations

9. The working group was formed to consider the options for responding to the Government's decision on retained pensions and also to consider the implications of the wider reforms of the pension scheme. To date the working group has primarily focused on the retained pensions' issue.
10. The LGA received legal advice following the Government's decision and this has been reviewed by the working group.
11. The legal advice indicates that although the Government's decision places the burden of costs on Fire and Rescue Authorities, it will not be possible to know how the government will take these costs into account in the funding of fire and rescue authorities until the next spending review. The working group therefore recommends to FSMC that at this stage it will be important to continue to seek a compromise with Government over the allocation of the costs.
12. It is proposed that FSMC reiterates to Government its position on the retained pensions issue; that it sets out the basis for continued negotiation on the matter; and makes Government aware of the possibility of a more formal challenge in the event that the spending review does not recognise the cost burden associated with the retrospective access to the pension scheme for retained firefighters.
13. The Government has argued that prior to 2006 it was not responsible for all pension costs but only that portion which was funded from formula grants. During the relevant period this would have amounted to around 70 per cent for the costs, with the remaining 30 per cent being funded from council tax. This point will need to underpin further negotiations with government.

Next steps

14. Members are asked to:

- 14.1. Consider the recommendations of the Pension working group set out in paragraphs 11 to 13 and agree a formal position on the next steps.
- 14.2. Officers will draft a letter from FSMC to Government and this will be agreed with lead members.
- 14.3. We will request a meeting with the Minister to begin further negotiations on a compromise position.