

# LEICESTERSHIRE

## FIRE and RESCUE SERVICE

Status of Report: Public Agenda Item: 12

Meeting: Policy Committee  
Date: 5<sup>th</sup> November 2014  
Subject: Firefighters' Pension Scheme 2015: Proposals for New Governance Arrangements  
Report by: The Chief Fire and Rescue Officer  
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For: Decision

### 1. Purpose

The purpose of this report is to update members of the Policy Committee on the Department for Communities and Local Government's (DCLG's) proposals for the new governance arrangements for the 2015 Firefighters' Pension Scheme. The Policy Committee is asked to agree the proposed response on behalf of the Combined Fire Authority (CFA).

### 2. Executive Summary

- 2.1 This consultation seeks responses on draft regulations for the new governance arrangements for the Firefighters' Pension Schemes to come into force from the 1<sup>st</sup> April 2015. The main proposals include a requirement for the Secretary of State to establish a national Scheme Advisory Board to provide advice on the desirability of changes to the pension scheme. The draft regulations also require a scheme manager of the Firefighters' Pension Scheme i.e. a Fire and Rescue Authority (FRA) to establish a local pension board to assist them with the effective, efficient management and administration of the scheme. The regulations also introduce the proposed cost control mechanism. This consultation only applies to England.
- 2.2 It is hoped to submit a joint sub-regional response with Derbyshire and Nottinghamshire and our joint Firefighters' Pension Administrator, Leicestershire County Council. A proposed joint response has been prepared for approval by the Committee. The deadline for consultation responses is Friday 21<sup>st</sup> November 2014.

### 3. Report Detail

#### **Background**

- 3.1 The final report of the Independent Public Service Pensions Commission, published on the 10<sup>th</sup> March 2011, made a number of recommendations to "make public service pension schemes simpler and more transparent, fairer to those on

low and moderate earnings”. One of the recommendations, which the Government accepted and included in the Public Service Pensions Act 2013, was the establishment of a properly constituted, trained and competent Pension Board, with member nominees, responsible for meeting good standards of governance including effective and efficient administration. In the case of the locally administered schemes, these should be local pension boards. Lord Hutton also found that there should also be a pension policy group for each scheme at national level for considering major changes to scheme rules.

- 3.2 DCLG published a consultation to meet Lord Hutton’s recommendations to make the Scheme more accountable to its members and to taxpayers on the 10<sup>th</sup> October 2014. In particular, the consultation proposes the setting up of new bodies, made up of employer and scheme member representatives.
- 3.3 DCLG has previously consulted on draft regulations in May 2015 to implement the Firefighters’ Pension Scheme 2015. This included proposals for the implementation of the cost control mechanism which has been refined in these draft regulations. Those draft regulations for the 2015 Scheme also made provision for the definition of ‘scheme manager’ as the local FRA. The scheme manager is responsible for the administration of the scheme.

#### **Scheme Advisory Board**

- 3.4 The first of these bodies is a national Scheme Advisory Board. The Board’s primary role will be to provide the Secretary of State for Communities and Local Government with advice on desirable changes to the Scheme’s regulations, when requested. There is currently a national policy committee, the Firefighters’ Pension Committee, which has an advisory role in considering potential scheme changes. The Committee is chaired by DCLG and consists of employer representatives and unions. The Director of Finance and Corporate Services is a current member of that committee and acts as a financial advisor to the Local Government Association (LGA) on Firefighters’ pension issues.
- 3.5 The Act further requires scheme regulations to provide for the establishment of a Scheme Advisory Board with responsibility for providing advice to the responsible authority, at the authority’s request, on the desirability of changes to the Scheme. The regulations may also provide where there is more than one scheme manager and pension board in a scheme, for the Scheme Advisory Board to provide advice to the scheme managers or pension boards on the effective and efficient administration of the scheme. The responsible authority must be satisfied that the Scheme Advisory Board members do not have a conflict of interest.
- 3.6 Discussions on a new Scheme Advisory Board have taken place between the LGA and the fire service trades unions and draft Terms of Reference have been developed. The draft regulations, published alongside this consultation, are light touch and seek to facilitate the draft Terms that have been developed.
- 3.7 The regulations make the national Scheme Advisory Board responsible for providing advice, on request, to the Secretary of State on whether there should be changes made to the terms of the Firefighters’ Pension Schemes. This could be in

relation to particular technical features of the scheme or broader scheme design issues.

- 3.8 The Board is furthermore responsible for providing advice and guidance to scheme managers and local pension boards in relation to the effective and efficient administration of the schemes. The intention is that the Board will encourage best practice, benchmark performance, and coordinate technical and standards issues. It is also likely to have a liaison role with the Pensions Regulator and other interested parties.
- 3.9 It is for the national Scheme Advisory Board to determine their own procedures and voting rights and the establishment of any sub-committees or joint committees. The regulations require the national Scheme Advisory Board to have a chairman and to consist of no more than 14, or less than two, additional members. These individuals will be appointed by the Secretary of State who will be looking, although not bound, to appoint equal numbers of employee and employer representatives. The Secretary of State will also be looking to ensure that there is a wide range of representation on the Board and that all interested parties that represent employees and employers are on the Board. The Chairman may appoint, with the agreement of the Board, no more than three individuals to be non-voting advisory members of the Board and can also appoint individuals who are not Board members, to be members of a sub-committee. All Board and sub-committee members will hold and leave office in accordance with the terms of their appointment.
- 3.10 The Secretary of State must be satisfied that there is no conflict of interest both before appointment, and then subsequently from time to time. An individual who is, or is to be, appointed must provide the Secretary of State with any information which they reasonably require to satisfy themselves whether there is a conflict.
- 3.11 The Scheme Advisory Board will have the power to raise money from scheme managers to fund its activities. To do so, the Scheme Advisory Board must prepare an annual budget for approval by the Secretary of State. The Secretary of State will ensure that the Board is delivering value for money for taxpayers. The Board may determine how to recover the money from scheme managers based on the number of members of the 2015 scheme and connected schemes, and a scheme manager is required to pay that amount.

### **Local Pension Boards**

- 3.12 The draft regulations set out that Local Pension Boards should be formed by each FRA. These local boards may be advised by the national Scheme Advisory Board and are there to assist the scheme manager in the efficient and effective administration of the pension scheme.
- 3.13 The Act requires scheme regulations to provide for the establishment of a Local Pension Board to assist the scheme manager:
- secure compliance with the scheme regulations and other legislation relating to the governance and administration of the scheme, and any connected

scheme

- secure compliance with any requirements imposed by the Pensions Regulator, and
- in relation to any other matter specified in scheme regulations.

- 3.14 Amongst other matters, the Act also requires regulations to require the scheme manager to be satisfied that the Pension Board members do not have a conflict of interest, and that the board must have equal numbers of employer and member representatives.
- 3.15 There are some variances in governance within FRAs. DCLG believe that anecdotal information suggests that, in practice, the decisions concerning the administration of the scheme are delegated to an officer of the authority and that officer exercises its discretion within that delegated authority. Other authorities have other structures to make decisions.
- 3.16 In DCLG's opinion the Firefighters' Pension Scheme consumes a large proportion of the budgets of FRAs. The Government's view is that there should be greater scrutiny of decisions made by FRAs, particularly where these are made by individual officers, to provide more assurance to taxpayers and to scheme members, particularly given that any significant increase in costs that breach the cost cap could fall to members.
- 3.17 DCLG's approach to the framework governing the introduction of Local Pension Boards is to provide a broad regulatory framework, within which FRAs can set up their board locally while meeting the core objectives of Government policy as set out in the Act. The intention is for this to be supplemented by guidance issued by the national Scheme Advisory Board. There will be some regulatory requirements and there is a power for the Secretary of State to issue guidance to scheme managers on Local Pension Boards, to which the scheme manager must have regard.
- 3.18 Similar to the requirements of the Act, the regulations require the Local Pension Board to assist the scheme manager to comply with the regulations governing the Firefighters' Pension and Compensation Schemes and any requirements imposed by the Pensions Regulator. The regulations also require the Local Pension Board to assist the scheme manager to ensure the effective and efficient governance and administration of the scheme. This is, potentially, a wide ranging role and allows, for instance, the Board to look at the systems underpinning the administration of the scheme or how decisions are taken. However, the Local Pension Board is not a decision making body.
- 3.19 DCLG's expectation is that there will be one Local Pension Board per scheme manager. There may be scope, in future, for scheme managers to share a Pension Board where the function of a scheme manager is wholly or mainly shared with another scheme manager. The regulations give broad discretion to the scheme manager to determine the procedures applying to its board, including the voting rights and the establishment of sub-committees. It is the view of the three Combined Fire Authorities in the East Midlands that a preferred approach would be

to have a joint pension board where the three scheme managers and the joint scheme administrator could be held to account. In addition, the three authorities should learn from the implementation of the new 2014 Local Government Pension Scheme and ensure that the workload and demands on both Members and the Pensions Administrator's teams are kept an appropriate level.

- 3.20 It will be for the scheme manager to determine its membership, and how the members are appointed and removed from the Board. However, the Board must have an equal number of member and employer representatives and must consist of at least four members. Member representatives are appointed for the purpose of representing members of the Firefighters' Pension Scheme. These may be, but are not limited to, trade union representatives. However, the member must be in scheme employment and therefore must be a firefighter who is currently employed by a FRA. This means that former firefighters (which could include pensioner members if they are no longer employed as a firefighter) cannot be a member representative.
- 3.21 Employer representatives are appointed for the purpose of representing employers. These may be, but are not limited to, councillors or officers of the Authority. However, an officer or member of the Authority which is responsible for making decisions on the pension scheme is not permitted to be a member of the Board as the Board may be scrutinising the decisions of that officer or member.
- 3.22 It is for the scheme manager to determine the terms of appointment to the Board but, in doing so, they must be satisfied that the individuals have the capacity and understanding to represent either the employer or scheme members, as appropriate. The scheme manager must also be satisfied that there is no conflict of interest, both before appointment and subsequently from time to time. An individual who is, or is to be, appointed must provide the scheme manager with any information which they reasonably require to satisfy themselves as to whether there is a conflict.
- 3.23 It is for the scheme manager to determine whether any expenses should be paid in relation to the running of the Local Pension Board. DCLG's view is that any costs should be on an exceptions basis and only to recover costs. It is possible that the Local Pension Board will look to obtain specialist professional advice, for instance actuarial, and the scheme manager may wish to provide an annual budget to the Board for such instances.

### **The Employer Cost Cap**

- 3.24 The Scheme will set an employer cost cap to protect scheme employers and therefore taxpayers from unexpected increases in costs to ensure it remains sustainable and affordable. If the cost of providing scheme benefits is more than two percentage points lower or higher than the cost cap, then changes must be made to bring the costs back to the correct level. The decision about what changes to make rests with the Secretary of State who must consult with the Scheme Advisory Board. If the Board is unable to unanimously agree what changes should be made, then three months after consulting them, the Secretary of State must begin to change the rate at which members build up their benefits.

- 3.25 The May consultation on the regulations relating to the membership and benefits in the new Firefighters' Pension Scheme 2015 included a process (at regulation 152) for reaching agreement where the costs of the Scheme fall above or below the cost cap, so that the costs of the Scheme are returned to the level of the employer cost cap. The draft regulations published alongside this consultation set out a revised, simpler process for the Secretary of State to reach agreement with scheme managers, employers and members (or their representatives) to achieve the target cost. That procedure involves consultation with the national Scheme Advisory Board for such a period as the Secretary of State considers appropriate, with a view to reaching a unanimous agreement with members of that Board. However, if agreement is not reached within 3 months after the end of that consultation, the Secretary of State must take steps to adjust the accrual rate to achieve the target cost of the scheme.
- 3.26 The employer cost cap will be set by the 2012 valuation of the Firefighters' Pension Schemes in England, which is currently being undertaken by the Government Actuary's Department. Detailed discussions on the assumptions to be adopted for the valuation took place at the Firefighters' Pension Committee. The methodology adopted for the valuation is set out in Treasury Directions, which were also subject to consultation. The cost cap will be announced following the outcome of the valuation, which will be later this year and the figure will be incorporated into the scheme regulations.

#### **4. Report Implications / Impact**

##### **4.1 *Legal (including crime and disorder)***

- a) These draft regulations ensure that the Firefighters' Pension Schemes in England comply with the requirements in the Public Service Pensions Act 2013 to establish new arrangements for governance, including a mechanism to control future costs of the Scheme. Following the consultation, the Government's final position will be implemented by an amendment to the regulations establishing the 2015 Scheme.
- b) This Act gained Royal Assent on the 25<sup>th</sup> April 2013 and put in place the legislative framework for the new governance arrangements for public service pension schemes. In relation to the Firefighters' Pension Schemes in England, it set the 'responsible authority' to be the Secretary of State for Communities and Local Government.

##### **4.2 *Financial (including value for money, benefits and efficiencies)***

These are contained in the body of the report.

##### **4.3 *Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)***

A key objective of the Act is to ensure a fair balance of risks between scheme members and the taxpayer. To achieve this, the Government has established an employer cost cap mechanism to provide backstop protection to the taxpayer and to ensure that the risks associated with pension provision are shared more fairly

between employers and scheme members.

4.4 ***Staff, Service Users and Stakeholders (including the Equality Impact Assessment)***

- a) DCLG has considered whether there are any equalities considerations relevant to the policy set out in these regulations and so far considers that there are not any. Equalities issues will be relevant in appointing individuals to the local pension boards and Scheme Advisory Board, and will need to be considered at that point.
- b) The creation of Local Pension Boards and the open letter from the Fire Minister might create unrealistic expectations amongst firefighters and their representative bodies about their ability locally to influence decisions through Local Pension Boards given the limited discretions available to FRAs and that the Local Pension Boards will not be decision making bodies.

4.5 ***Environmental***

None

4.6 ***Impact upon Our Plan Objectives***

None arising directly from this report.

**5. Recommendations**

The Policy Committee is asked to agree the draft consultation response for submission to DCLG.

**6. Background Papers**

- a) Firefighters' Pension Scheme 2015: Proposals for new governance arrangements (Department for Communities and Local Government, 10<sup>th</sup> October 2014)
- b) Open letter to all firefighters from Penny Mordaunt MP, Parliamentary Under Secretary of State of 10<sup>th</sup> October 2014
- c) Firefighters' Pension Scheme 2015 Draft Regulations – Consultation (Policy Committee Report - 5<sup>th</sup> March 2014)

**7. Appendix**

Draft CFA response to DCLG

**Draft Response to the consultation on changes to governance arrangements for the Firefighters Pension Scheme**

Thank you for the opportunity to respond to the above consultation. We are submitting a joint response on behalf of the Derbyshire Combined Fire Authority, Leicester, Leicestershire and Rutland Combined Fire Authority, the City of Nottingham and Nottinghamshire Combined Fire Authority and Leicestershire County Council.

Each of the consultation questions is addressed in turn.

**1. Do the draft regulations deliver the policy objective on the introduction of local pension boards and a Scheme Advisory Board as set out in this consultation document?**

Yes. Perhaps not in the best or most efficient way possible (see later comments).

**2. Do you have any comments on the terms of the local pension boards or Scheme Advisory Board as set out in regulations?**

The creation of a national Scheme Advisory Board is welcomed. It has become increasingly difficult in recent years to get definitive advice on pension matters from the Department of Communities and Local Government (DCLG) which has resulted in different interpretations of pension regulations being applied by different employers. This in turn has led to appeals and disputes which could easily have been avoided.

However the 2013 Public Services Pensions Act and this consultation are sufficiently unclear to make the determination of the actual practical duties of the local pension board largely opaque although it is made clear in the consultation that the local pension board is not a decision making body. The consultation states that

“local pension boards should be formed by each fire and rescue authority. These local boards may be advised by the national Scheme Advisory Board and are there to assist the scheme manager in the efficient and effective administration of the pension scheme.”

It seems that the Act was primarily intended for local pension funds such as the Local Government Pension Fund rather than a locally administered national unfunded scheme such as the firefighters' scheme. It is still unclear what the specific terms of reference of the local pension board should be, and what the training requirements for its members are. Quite how the local board is to advise the scheme manager is unclear.

Many Fire Authorities remain confused by the role of the local pension board and it is to be hoped that DCLG and ultimately the national Scheme Advisory Board will provide definitive advice and guidance on this issue. It is also unclear as to the competences required by board members and how these might be acquired, as at



present there appears to be no national training available. It is also unclear as to whether the local pension board should include elected Members or not.

If it is considered essential that local pension boards are created then these should be encouraged to be joint boards between groups of fire authorities to save both money, duplication and allow local benchmarking to take place. Nottinghamshire, Derbyshire and Leicestershire all procure pensions advice from a single source, Leicestershire County Council and the notion that three separate local boards will be holding this one administrator to account seems rather odd to say the least and particularly inefficient. We would like the regulations to allow the creation of joint pension boards where this is locally agreed by the relevant Fire and Rescue Authorities.

**3. Are there other powers or requirements that should be put in place for local pension boards or the Scheme Advisory Board?**

As discussed above, the creation of a Scheme Advisory Board seems a sensible step forward but the practical role of the local pension board remains unclear. We would like the regulations to allow the creation of joint pension boards where this is locally agreed by the relevant Fire and Rescue Authorities.

**4. Should the regulations be more, or less prescriptive about potential members of the local pension boards or the Scheme Advisory Board?**

In terms of the local pensions board this again depends to a large extent on what the role of the board is and what business it will transact. The notion of having scheme members involved in some way in the administration of their scheme seems sensible but only when the real duties of the board emerge can decisions be made about this.

**5. Is there an alternative funding mechanism for the Scheme Advisory Board which could be put in place rather than raising funds from scheme managers with the Secretary of State ensuring that the Board is delivering value for money?**

It is considered that all costs of the operation of the firefighters' pension scheme should be funded through the pensions account. This would be the same as the Local Government Pension Scheme where all administration costs are borne by the fund. The nature of the firefighters' scheme means that there would be no incentive to control costs and therefore it is suggested that DCLG set a budget for administration that can be charged to the pension account which would include the cost of both the national advisory board and the local pension boards.

**6. Do you consider that any groups with protected characteristics under equalities legislation are being disproportionately affected? If so, what do you consider to be the nature and scale of that disproportionate effect?**

No.