

**Proposed Amendment to Firefighters' Pension Schemes
Rule G1, Pensionable pay and average pensionable pay:**

Treatment of Flexible Duty Supplement

Introduction

This paper follows on from this Association's response to the recent Department for Communities and Local Government (DCLG) consultation on proposed amendments to the Firefighters' Pension Schemes. Comments made herein are an attempt to persuade DCLG to reconsider and reverse the proposal to exclude Flexible Duty Supplement payments from definitions of pensionable pay within the 1992 and 2006 Firefighters' Pension Schemes.

Background

It is accepted that there is a need for clarity about which elements of pay should be regarded as pensionable and the Fire Officers' Association supports the view that pensionable pay should be the relevant nationally agreed pay rate for each FRS role. We also agree that allowances and emoluments of a temporary nature should not be counted as pensionable for the purposes of the 1992 and 2006 Firefighters' Pension Schemes.

Fire and rescue authorities should have discretion on the matter but not at the national taxpayer's expense; therefore, any local fire and rescue authority determination that an allowance will be pensionable should be funded by that authority.

However, we fundamentally disagree that the Flexible Duty Supplement (FDS) is a temporary allowance within the definition that applies to other allowances.

History

When considering the status of the Flexible Duty Supplement it is helpful to be aware of the background to its introduction. Prior to the mid-1980s, fire service senior officers (now middle managers) operated on what was known as a Residential Duty System for which they received a non-pensionable 25% allowance. At the behest of national employers, negotiations with trade unions were opened with a view to increasing staff availability by modifying this duty system.

During the 1980s, the Flexible Duty System was proposed which introduced positive and standby working hours rather than an 'on call' 96 hour working week. As an incentive to agree the proposed change it was agreed, through negotiation, that the additional payment would be pensionable and that the 25% additional payment would reduce to 20% in order to offset the cost to the pension scheme. At no time during negotiations was it suggested that the additional payment (Flexible Duty Supplement) should be regarded as a temporary allowance and this is why the Grey Book states that the allowance cannot be withdrawn without consent.

It seems that the history of this negotiated supplementary element of pay was forgotten when formulating the current proposal to remove its accepted status as a pensionable element of core pay. FDS is not time-limited in practice, despite DCLG insistence that a contrary situation applies.

'Grey Book' Treatment of Flexible Duty Supplement

From the wording of the Grey Book it is clear that the Flexible Duty Supplement is considered to be an element of core pay for members of the FRS who are conditioned to the Flexible Duty System.

The Grey Book, Fifth Edition, 1998 covered the Supplement, within the Section V – “Pay of Whole Time Members” as follows: -

8. Flexible duty supplement

An officer conditioned to the flexible duty system in accordance with paragraph 3(1)(b) of Section II of the Scheme is to be paid, in addition to the basic pay under Appendix I of the Scheme to which he or she is entitled by rank and service, a pensionable supplement of 20% of his or her basic pay. Safeguarding arrangements for officers in post on 31st December 1984 who at that date were conditioned to the former residential duty system are set out in paragraph 2 of Section VI.

Section V also included the following elements of pay;

- Increased pay for acting as an assistant,
- Increased pay for additional responsibilities,
- Long service payment, and
- Minimum promotion increment

The above-listed items are the only additional payments mentioned under pay of whole time members. All other supplements and allowances appear at Section VI ‘Emoluments and Allowances for Whole Time Members’.

The Fifth Edition of the Grey Book, therefore, distinguishes between other emoluments and allowances which should, rightly, not be treated as pensionable for the purposes of the 2011/12 Amendment Order.

A misunderstanding about the nature of the Flexible Duty Supplement may have arisen from revision and rationalisation of the previous version when introducing the Sixth Edition where the Supplement has been moved to the Allowances and Reimbursements section. However, in agreeing the revised ‘Grey Book’ there was no negotiated material change to the nature of the allowance and Section 4, Part B – “Pay” still states: -

Flexible duty system supplement

3. *An employee on the flexible duty system shall be paid a pensionable supplement of 20% of basic pay.*

Section 4, Part B also covers the following Allowances and Reimbursements: -

- Additional responsibility allowance
- Retained duty system payments
- Annual retainer
- Disturbance payment
- Payment for work activity
- Compensation for remuneration lost
- Attendance at training centres
- Employees on the day-crewing duty system who undertake retained duties
- Volunteer firefighters
- Acting up and temporary promotion
- Pre-arranged overtime
- Casual overtime
- Payment for recall to duty as a result of a serious incident

The fact that the Flexible Duty Supplement now sits with other allowances is misleading and perhaps this is the reason why some parties now consider it to be a temporary allowance rather than a pay supplement to the core pay for people employed on the Flexible Duty System.

Under normal circumstances Flexible Duty Supplement cannot be regarded as temporary since Section 4 Part A of the Grey Book (Sixth Edition) – “Hours of duty and duty systems” states:-

"Transfer onto the flexible duty system will be voluntary. In view of the pension implications, employees will not be transferred from the flexible duty system against their will, except as a result of a disciplinary reduction in role to a level where there are no posts in that fire and rescue authority on the flexible duty system."

Proposed Amendment Order

Proceeding with the proposed amendment to Rule G1 could make a significant difference to the pension benefits of people who are promoted to Flexible Duty System roles in the future. Changing the treatment of the supplement for pension purposes represents a material change to conditions of service.

Fire and rescue authorities have accepted the Flexible Duty Supplement as an element of core pay for pension purposes since its introduction

The proposal is perceived as yet another attack on managers' conditions of service on top of other disincentives such as the change to pension tax relief and the proposed introduction of tiered pension contributions.

We are concerned that the more talented and capable people will be deterred from seeking advancement as they ask themselves whether the cumulative reduction of rewards will offset the additional stresses that accompany managerial roles. The pensionable status of the Flexible Duty Supplement is, therefore, a significant issue.

Conclusion

There is a long-standing nationally negotiated agreement that the Flexible Duty Supplement forms part of core pay for roles conditioned to the Flexible Duty System.

This is reflected in the National Scheme of Conditions of Service (Grey Book) which clearly states that the Supplement should be treated as pensionable.

It is, therefore, recommended that the Flexible Duty Supplement should be specifically accommodated within the Firefighters' Pension Schemes as an element of core pay.

If the Department is not minded to accept the above recommendation, we request that this paper be tabled for discussion at the Firefighters Pension Committee meeting scheduled for 18 January 2012.