

**FIREMEN'S PENSION SCHEME ORDER
1992**

**FIREFIGHTERS' PENSION SCHEME
(SCOTLAND) ORDER 2007**

**FIREFIGHTERS' COMPENSATION SCHEME
(SCOTLAND) ORDER 2006**

**Guidance for Independent Qualified
Medical Practitioners (IQMPs) providing an
opinion on permanent disability, fitness for
work, qualifying injury and degree of
disablement of firefighters employed by
Scottish Fire and Rescue Authorities.**

Issued May 2008

Guidance for Independent Qualified Medical Practitioners (IQMPs) providing an opinion on permanent disability, fitness for work, qualifying injury and degree of disablement of firefighters employed by Scottish Fire and Rescue Authorities.

Introduction

The Firemen's Pension Scheme Order 1992 (FPS) and the Firefighters' Pension Scheme (Scotland) Order 2007 (FPS(S)) provide for early payment of benefits to scheme members who are found to be permanently disabled to undertake the duties of their role (formerly rank). The Firefighters' Compensation Scheme (Scotland) Order 2006 (FCS) allows the award of further benefits where the incapacity has been occasioned by a qualifying injury. The level of benefits payable to a member is determined not only by his or her earnings capacity but also his or her capability to undertake regular work.

Certain benefits can also be provided to firefighters who chose to opt out of the FPS or FPS(S), or for those who before 2006 were not permitted entry to the FPS, i.e. those employed as Retained Duty System (RDS) or volunteer Firefighters.

In the case of a former firefighter who is in receipt of an injury award and in respect of whom a determination was made before April 2006; and whose case is the subject of review, the matter would be dealt with under the provisions of the FPS rather than the FCS. In practice this has no significance as the FCS mirrors the provisions which were repealed. In the circumstances this guidance does not refer to such cases separately.

Ill health retirements

The medical prognosis is the key input to the final decision as to whether to grant ill health retirement. But the decision to grant ill health retirement, or refuse it, should not be taken by the medical practitioner. This is a decision that can only be taken by the employer, although the authority will be bound by the opinion of the medical practitioner on medical issues.

In effect, three decisions have to be taken during the consideration process:

- First, the decision whether to end an employee's contract. This can only be taken by the employer. Management need to make decisions on any non-medical aspects of the case before consideration for onward referral.
- Second, the medical decision on whether or not the case meets the criteria within the pension scheme for ill health retirement, which must be determined by an occupational health practitioner.
- Third, the decision on the terms under which the employee should leave.

This guide is concerned with the second stage of the process, i.e. the medical decision. The FPS and the FPS(S) require that the medical assessment is

objective and impartial and both schemes require a clear separation in the role and responsibilities of the Medical Adviser (MA) to the Fire and Rescue Authority (FRA) who first sees the applicant, and the Independent Qualified Medical Practitioner (IQMP) who advises whether the scheme criteria have been met. The role of the MA is to compile the medical evidence relevant to the case and the role of the IQMP is to consider the evidence and if necessary, examine the applicant, and advise the FRA whether the scheme criteria are satisfied. The opinion of the IQMP is binding on the FRA on all matters referred under Rule H1 of the FPS, Part 8(2) of the FPS(S) and Part 6 1(2) of the Compensation Scheme including those which are wholly or partly of a medical nature.

Whether or not a job is available for the member is not a matter for the pension scheme and should not be taken into account by the IQMP when reaching an opinion.

The purpose of this guidance is to help IQMPs to understand what their role is in determining a medical opinion on the questions of permanent disablement for the member's role, capability for regular work, whether an injury is qualifying and calculation of degree of disablement. The ultimate objective is to enable IQMPs to provide FRAs with an opinion that is fair, consistent and supported by clear evidence and reasoning.

Throughout this guide the individual who is being assessed is referred to as "the member", since these procedures will normally apply to members of the FPS or FPS(S) being considered for ill-health retirement. However, there may well be occasions where the issue of permanent disablement for regular employment needs to be determined after the individual has retired from the service. In view of this the term "member" should be taken to include a retired member and also those individuals who are not members of the FPS or FPS(S) but may qualify for benefits as a result of a qualifying injury as part of an injury award under the FCS.

The guidance is divided into six sections:

- 1. Overview of the procedure**
- 2. The role of the FRA and IQMP**
- 3. Arrangements under the Fireman's Pension Scheme, the Firefighters Pension Scheme (Scotland) and the Firefighters' Compensation Scheme (Scotland)**
- 4. Reasonable Adjustments**
- 5. IQMP assessment**
- 6 Glossary of Terms**

1 Part 1 **Overview of the procedure**

1.1 From April 2006 the way in which the ill-health benefits of the FPS are calculated changed. The new system also applies to the FPS(S) and involves two tier ill health retirement awards. The lower tier provides for immediate payment of accrued pension, the higher tier provides a similar pension plus an enhancement. In addition provisions regarding injury awards have been transferred from the FPS to the FCS but remain unchanged.

1.2 A firefighter who is required to retire on grounds of permanent disablement for the duties of his/her role and who is:-

A member of the FPS with at least 2 years pensionable service
A member of the FPS(S) with at least 3 months' eligible service

is entitled to an ill health pension.

1.3 Each role has a "role map" setting out the duties and competencies expected of the individual at that level and will include duties other than fighting fires. (See paragraphs 3.3 and 3.4 below). To satisfy the criteria for receipt of a pension the disablement must be permanent. In determining whether the disablement is permanent, regard must be had to whether it is likely to continue to normal pension age of 55 in the FPS or 60 in the FPS(S). If the person has resigned with a deferred pension the relevant ages are 60 and 65. Where these criteria are satisfied a lower tier ill health pension would be payable.

1.4 If it is decided that not only is the member permanently disabled for the performance of the duties of their role but also for regular employment, the member becomes entitled to an additional higher tier pension provided they have at least 5 years' pensionable service (FPS) or qualifying service (FPS(S)). Regular employment in this context means employment for 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises. This requires consideration of the member's ability to work in any employment.

1.5 When a FRA is considering the question of ill-health retirement for a member or, in the case of a firefighter who has resigned, early payment of a deferred award, it is required to refer the question of whether that member is permanently disabled from engaging in firefighting and the other duties of their role to the IQMP. The IQMP will normally be asked also to provide an opinion on the member's capability for regular work.

Questions to be addressed by the IQMP

1.6 The questions to be addressed by the IQMP when providing a medical opinion fall into four stages and are as follows:

1. Is the member **disabled from performing the duties of their role** (with reasonable adjustments as appropriate) and, if so, is that disablement likely to be **permanent**?

If so, under the provisions of rule A15 of the FPS, the FRA may retire the person compulsorily, and under both schemes a lower tier ill health pension can be paid.

2. If the member is permanently disabled for the duties of their role, are they **also disabled for regular employment (defined as 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises)**.

This determines whether a higher tier award is payable.

3. Has any permanent disablement been caused by a **qualifying injury**?

If so this provides for an injury award to be paid.

4. If disablement has been caused by a qualifying injury what is the **degree of disablement**?

This determines the level of the injury award.

1.7 The two pension schemes and the compensation scheme require FRAs to carry out regular reviews of awards and therefore the IQMP may also be asked to determine if a retired member is still both permanently disabled for the last role they held in the fire and rescue service and/or is still incapable of regular work. This will occur when the FRA reviews the member's case once an award has been put into payment.

1.8 There are a number of certificates available to the FRA to use when referring a case to the IQMP and the use of each is determined by the circumstances of the individual case. The FRA will determine what certificate is applicable and will include this in the referral papers.

Part 2 The Role of the FRA and IQMP

The Role of the FRA

2.0 It is the role of the FRA to ensure adequate arrangements are in place for maintaining the fitness of firefighters and to manage sickness absence throughout an employee's working life through the use of robust systems for recording the incidence and causes of sickness absence. The FRA should have policies in place regarding prevention, rehabilitation and redeployment within the role. These policies may include limited use of the private health market. Triggers for action will include early and wide referral to occupational health.

2.1 In managing a member, referral will be made to the MA from time to time to confirm that they continue to meet general fitness criteria, to consider appropriate treatment options and to assist the individual in preventing further absence.

2.2 In the consideration of each case there may come a point at which management consider that the member's ill health is such that ill health retirement should be considered. The FPS, FPS(S) and FCS provide the gateway to ill health and injury awards and set out the criteria to be met for pension awards to be made. Although in the first instance the schemes allow for the FRA to determine what awards might be payable there is a requirement for referral to an IQMP for an opinion on whether the criteria have been met. The opinion of the IQMP is binding on the FRA but it is the FRA who makes the final decision on awards and the level of award payable.

2.3 When seeking the opinion of an IQMP the FRA will refer the case to the MA to collate all the papers relevant to the incapacity under consideration. This **must** include all appropriate medical records e.g. GP records, occupational health records, X rays, Scans, consultants' reports etc. When making the referral the FRA will also provide the necessary certificate for completion by the IQMP. This sets out in detail the questions to be addressed and requests a date on which the case should be reviewed. There is a statutory requirement to review ill-health awards where the individual has been in receipt of the award for less than 10 years and is under age 60 (FPS, Rule K1) or under State pensionable age (Part 9, rule 1 FPS(S)). The FRA is also required to review injury awards under Part 9, rule 1 of the FCS.

2.4 FRA's will produce a HR best practice guide which will aim to ensure that there will be robust and uniform HR management by the FRA's prior to seeking an opinion on ill-health

The IQMP's role

2.5 The qualifications for, and role of, the IQMP are set out in the regulations for the appropriate scheme, namely in Rule H1 and Schedule 1 of the FPS, and Part 1, rule 2 of the FPS(S) and rule 2 of Part 1 of the FCS. The

regulations specify the questions which the FRA must refer to the IQMP for an opinion before a decision can be reached and associated guidance (currently within the Commentary on the FPS) provides the certificates that must be completed at each stage (i.e. when the eligibility of a member to receive ill health or injury benefits is being considered or when an award is being reviewed).

2.6 Since the FRA must refer a case to the IQMP in terms of a specific question or questions, the IQMP must frame his or her report in terms of answering the question or questions that have been put, normally by completion of the medical certificate provided.

2.7 The IQMP must understand the purpose of his/her role and the procedures to be followed. This guidance covers the medical aspects and those procedures which affect the IQMP directly. More general information on the wider policy is set out in Firefighters' Pension Scheme Circulars which are issued from time to time and are available at www.scotland.gov.uk. The IQMP acts as an occupational physician but also performs a vital function in a process which will entail decisions about a firefighter's future employment and pension rights. The procedures followed during the assessment must be capable of being justified and the IQMP must be confident about the role which is being performing. If there is any doubt about any procedural issue the IQMP should contact the FRA before proceeding further. IQMPs are under an obligation to ensure that they are competent in performing the IQMP role and have the necessary knowledge and skills to perform this role. FRAs should ensure that the IQMP that they use is competent. Advice can be sought from ALAMA (The Association of Local Authority Medical Advisers).

2.8 The IQMP will need to be aware of any relevant case law. The human resources department of the Fire and Rescue Service will be able to provide this. Although medical evidence may indicate entitlement to an award under the pension scheme this cannot be recommended where a legal precedent prevents this. Whilst this would not affect the medical decision it will have consequences for the pension status. Historically this has had a greater impact on decisions connected with qualifying injury than ill health retirement, with the "Jennings" judgement being of particular importance.

2.9 When considering a case the IQMP should read carefully the documents in the file referred from the MA and the report provided. All the medical evidence provided by the FRA should be considered, including any GP records, occupational health notes, consultants' reports etc. The IQMP should have the full occupational health file and any management submissions relating to it, together with any relevant submissions made by the member or on their behalf, but would not necessarily be expected to examine the member before reaching an opinion.

Part 3: Arrangements under the FPS, FPS(S) and FCS

The Role of a firefighter

3.1 Under the terms of the FPS a regular firefighter (see definition in glossary) may be required to retire on medical grounds if he or she is permanently disabled for all the duties of his or her role as a firefighter. The FPS(S) allows for an ill-health pension to be paid if a regular, retained or volunteer member (again see definitions in glossary) leaves employment by reason of permanent disablement.

3.2 Since 2005 when the Fire (Scotland) Act introduced a statutory duty on FRAs to promote fire safety, much of the emphasis of the work of a firefighter has moved away from fighting fires (engaging in firefighting) to community fire safety and related work. As a result the emphasis is now on a much wider range of duties.

3.3 For example, using the role map as a basis, the following are the ordinary duties of a firefighter for the purpose of assessing permanent disablement under scheme regulations;

- Inform and educate your community to improve awareness of safety matters
- Take responsibility for effective performance
- Save and preserve endangered life
- Resolve Operational Incidents
- Resolve operational incidents
- Protect the environment from the effects of hazardous materials
- Support the effectiveness of operational response
- Drive, manoeuvre and redeploy fire service vehicles
- Support the development of colleagues in the workplace
- Contribute to safety solutions to minimise risks to your community

3.4 As members gain promotion within the Service their duties and responsibilities change. A role map giving full details of the tasks to be undertaken is available for each role and should be used when considering fitness for the duties of that role. This should be provided by the FRA and are available through published NJC Circulars.

3.5 Without a relatively robust test of fitness the FRA would be unable to safeguard the health, safety and wellbeing of firefighters, which in turn underpins the operational effectiveness of the Fire and Rescue Service. The FRA cannot retrain firefighters who are permanently unfit for the duties of their role.

Disablement

3.6 Under scheme rules disablement is defined as :

“incapacity, occasioned by infirmity of mind or body, for the performance of duty.....” (FPS, Rule A10)

" such incapacity, occasioned by infirmity of mind or body, as makes the firefighter member unable to perform any duties of the role in which the firefighter member was last employed" (FPS(S), Schedule 1 Rule 3)

Permanent Disablement

3.7 The scheme rules, (i.e. Rule A10 in the FPS, Part 1, rule 3 in the FPS(S), and rule 8 Part1 in the FCS) provide :

“References in this Scheme to a person's being permanently disabled are references to his being disabled at the time when the question arises for decision and to his disablement being at that time likely to be permanent.”

The time when the question arises for decision should be interpreted as being the assessment or consultation date. The case should be looked at on that day and the opinion given as at that day.

The phrase “likely to be permanent “is also used in Rule H1(2) in the FPS, and Part 8, rule 2 in the FPS(S), where the questions to be put to the IQMP are set out.

3.8 Under the regulations, in determining whether a disablement is permanent a FRA shall have regard to whether the disablement will continue until the person’s normal pension age i.e. age 55 in the FPS. The FPS(S) has a similar provision in Part 1, rule 3(3) which provides

(1) In determining whether a person’s disablement is permanent, the authority shall have regard –

a) in every case, to whether the disablement will continue until the person’s normal pension age; and

(b) in relation to a person who has taken a deferred pension , to whether the disablement will continue until his normal benefit age.

Normal retirement age in the FPS(S) is 60, and normal benefit age 65.

3.9 “Likelihood” of permanence for the purposes of the schemes is based on the ordinary balance of probabilities applicable in civil cases: in other words, the question to be answered is whether there is a better than even chance that the person concerned will remain disabled. An individual would not normally be expected to be considered permanently unfit unless all the appropriate treatment options have been exhausted without success but that

need not be the case if the available treatments might alleviate symptoms but are unlikely to lead to a sufficient recovery to enable him/her to resume all the duties of their role.

The questions to be decided by the IQMP

3.10 Rule H1(2) in the FPS and Part 8, rule 2(2) in the FPS(S), provide that **before deciding, for the purpose of determining that question or any other question arising under this Scheme -**

- a) whether a person has been disabled,**
- b) whether any disablement is likely to be permanent**
- c) whether the person is also disabled for engaging in any regular employment (other than the role of a firefighter)**
- d) whether the person has become capable of performing the duties of a firefighter (FPS) or the role from which he/she retired on grounds of ill-health (FPS(S)); or**
- e) any other issue wholly or partly of a medical nature**

And similarly under the FCS Part 6, rule 1(2) -

- a) whether any disablement has been occasioned by a qualifying injury,**
- b) the degree to which a person is disabled, or**
- c) any other issue wholly or partly of a medical nature**

the authority shall obtain the written opinion of an independent qualified medical practitioner selected by them; and the opinion of the independent qualified medical practitioner shall be binding on the authority.

3.11 “Any other issue” under the FCS would also include relevant issues raised by the provision in Part 2, rule 3 for compensation for death or permanent incapacity while on duty.

3.12 When considering fitness for regular employment, all employments inside and outside the Fire and Rescue Service must be considered.

3.13 The decision regarding an individual’s fitness for both their role in the Fire and Rescue Service and regular employment will be made within the context of medical reports, information provided by the individual and the MA’s and IQMP’s observations. Care needs to be taken in interpreting information provided by the member, since individual perceptions may be subjective and affected by factors which are irrelevant to the medical decision. Where, for example, there has been a breakdown of relationships between a member and his or her FRA, the member may consider that he or she is unfit to return primarily for that reason.

3.14 In certain cases the FRA may provide, or it may be necessary for the FRA or IQMP to obtain, information from a treating specialist. It is recommended that any approach to a specialist should be on the basis of specific questions as answers to these are likely to be more useful than a general report in enabling the medical adviser to make a balanced and objective occupational health assessment. Questions seeking confirmation of diagnosis and prognosis **are** appropriate. It is important that the specialist should not be asked to give an opinion on medical fitness for work or eligibility to access pension benefits as this will often be outside their area of expertise.

Assessment of disablement for the duties of the member's role

3.15 The assessment of whether a member is permanently disabled for the duties of their role may not necessarily require the full application of the procedures set out in this guidance. If it is decided that the member is not permanently disabled for his/her role then the question of capability for regular work will not arise.

3.16 A firefighter is permanently disabled if he/she is medically unfit to carry out all the duties expected of him/her as listed in the role map for his/her role (rank). The decision about permanent disablement will be specific to the role of the firefighter, so it is important for the IQMP to be familiar with the different requirements of the various roles within the Fire and Rescue Service.

3.17 In a case where the IQMP finds that a member is permanently disabled for all the duties of their role, the IQMP is then required to examine in detail the member's capability for work-related activities in any capacity in order to determine whether he or she is incapable of regular employment and, if so, whether the disablement is also likely to be permanent, i.e. is the individual employable in the job market.

Assessment of disablement for regular employment

3.18 The purpose of this stage of the assessment is to determine the extent to which the member's functional capacity is affected by a disability or a medical condition which renders him or her permanently incapable to undertake regular employment. For the purposes of this assessment regular employment is "30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises".

3.19 If the member is not permanently incapable of regular employment, the IQMP should indicate which areas of regular employment the member is, or would be, capable of undertaking in the longer term, allowing for any adjustments which could generally be expected of a reasonable employer.

3.20 To assist the IQMP, the request from the FRA may include the MA's opinion on the issue of permanent disablement (for the duties of a firefighter and for regular employment) and a background report which will include all

relevant medical details and history of the case. The report will take account of the assessments of the member's GP and hospital specialist(s) as appropriate and should be supplemented with relevant records, reports, X-rays or scans.

3.21 The aim of the assessment is not to ascertain whether a person can carry out a particular action on a 'one-off' basis, but rather to assess the person's ability to carry out the activity with reasonable ease and reliability **at the time of the consideration**. If the person cannot perform an activity with any reliability at the time of consideration of the case, the IQMP will need to assess whether this inability is likely to be permanent.

3.22 The procedure set out here provides for a thorough assessment of fitness by the IQMP. Where the IQMP considers that an aspect of the member's medical history needs closer examination he or she should recommend referral to a specialist. The FRA would be expected to bear the costs of any such referrals.

3.23 The IQMP considers all the information referred and completes a certificate providing his/her opinion. This certificate is then used by the FRA to decide if ill-health retirement is appropriate, what level of benefits is due and, if applicable, entitlement to an injury award. The opinion of the IQMP is binding on the Authority whether or not the MA agrees with it. It is not permissible under the regulations for a FRA to refer for a further opinion.

3.24 The member has the right of appeal against the opinion of the IQMP to the Scottish Ministers who refer the case to the Regional Board of Medical Referees. The decision of the Board is binding on the FRA.

3.25 There is no avenue of appeal for the FRA against the opinion of the IQMP.

Assessment of whether there is a qualifying injury.

3.26 In order to be entitled to an injury award under the provisions of the FCS the member must first establish that that he/she is permanently disabled and that the infirmity was occasioned by a qualifying injury.

3.27 The purpose of this assessment is to determine whether there has been a qualifying injury. Qualifying injury is defined under Part 1, rule 7(1) as;

"an injury received by a person without his or her own default, in the exercise of his or her duties as a regular firefighter".

"For the purposes of this Scheme an injury shall be treated as having been received by a person without his or her default unless the injury is wholly or mainly due to his or her own serious and culpable negligence or misconduct. "

Rule 9 of Part 1 provides that "....any infirmity of mind or body shall be taken to have been occasioned by an injury if the injury caused or substantially contributed to the infirmity....."

The definition of "injury" includes "disease".

Substantial is not defined and will differ in each case. This is more than de minimis.

3.28 When referring a case for consideration of whether the member has suffered a qualifying injury the FRA will provide both details of the incapacity under consideration and any known relevant accidents/index incidents. The FRA should also inform the IQMP whether or not the FRA has accepted that the index incident arose in the execution of duty. This decision is for the FRA to make and should be decided before referral to the IQMP.

3.29 The IQMP must consider the aetiology of the incapacity by reviewing the processes and factors that may have contributed to the disablement. The full history, medical evidence and other relevant evidence should be considered.

3.30 The qualifying occupational factors must then be identified and their relative contribution determined. The effects of off duty incidents, pre-existing conditions or other non work related factors should be considered when determining how much of the incapacity was related to the alleged injury on duty.

Degree of disablement

3.31 After establishing that the person's disablement has been occasioned by a qualifying injury, the next step is to consider the extent to which the injury has caused or substantially contributed to the permanent disablement, before considering the degree of disablement. Because injury and disease often result from a combination of causes, apportionment should be used to avoid liability for non-occupational factors.

Separate guidance on apportionment is available at

<http://www.spa.gov.uk/fire/documents/FireCircular5-2005.pdf>

3.32 When considering the type of work an individual might undertake both functional capability and skills/competence must be taken into account. The FRA should provide details of the firefighter's skills, educational qualifications etc, and an indication of the types of alternative employment they think appropriate. Reference to any secondary employment which the firefighter may have taken whilst employed as a firefighter, the primary employment of a member of the retained duty system, or previous employments may also be relevant here. The medical opinion would then be sought on whether the member could carry out these alternative employments, and if not what would be within their capability from a medical viewpoint. Normally, an average of

earnings from three agreed employments would then be used to calculate the degree of disablement.

3.33 Each case should be considered on its merits and a set range of employments depending on the role within the Fire and Rescue Service should not be used. As an individual's experience both within the service and outside changes, the nature of alternative employment should also change to embrace the further skills acquired. An individual may have a range of skills not needed by a firefighter and these should not be excluded from consideration. Technical and professional qualifications acquired whilst the person was employed by the Fire and Rescue service may be relevant.

3.34 The calculation of degree of disablement can never be an exact science as opinions on capability will always be involved, but consistency of approach is essential if awards are to be fair both at the time of the decision and in the future. National rates of pay from the ASHE tables (Annual Survey of Hours and Earnings (ASHE) published by the National Office of Statistics should be used when calculating degree of disablement. A firefighter's job is a mobile one and there are national rates of pay. The expectation is therefore that the member is capable of working outside any particular locality where rates of pay in other occupations may be low. All ASHE tables provide both mean and median figures. The use of median is considered fairest as this covers the majority, rather than including the extremes.

3.35 When completing the medical certificate providing the opinion of the IQMP it must be made clear what percentage is apportioned as qualifying. Many appeals arise because the member does not understand how the degree of disablement has been assessed and it is worth spending time ensuring that the calculation can be understood, particularly where the percentage Reduced Earnings Capacity and Degree of Disablement are not the same due to apportionment which may reduce the final percentage awarded.

Bands of degree of disablement are as follows –

less than 25% (slight disablement)
26%-50% (minor disablement)
51%-75% (major disablement)
more than 75% (severe disablement)

In calculating the degree of disablement the following steps should be followed:

1. Establish Permanent Disability (PD)
2. Confirm Qualifying Injury (QI)
3. Apportion contribution of QI to PD (%)
4. Identify functional limitations of PD
5. Determine reduced earnings capacity (REC) due to functional limitations
6. Use REC% and apportionment % figures to calculate Degree of Disablement

previous occasion to provide the opinion at a later review. The selected IQMP must have had no previous dealings with the case.

Part 4. Reasonable adjustments

4.1 The Disability Discrimination Act (DDA) makes it unlawful, amongst other things, to discriminate against disabled people in employment. The aim of the DDA is to remove barriers and give disabled people the opportunity to compete for jobs and to exercise their skills and abilities in employment. The DDA should help disabled people to gain equal access to the opportunities, challenges and rewards of employment. This applies to the Fire and Rescue Service just as in any other employment.

What are reasonable adjustments?

4.2 Reasonable adjustments are a practical way for employers to remove certain disadvantages faced by disabled people and help them to contribute to the workforce. The DDA says that the duty to make reasonable adjustments applies where any physical feature of the employer's premises or any practices, policies or criteria made by or on behalf of the employer, place a disabled person at a substantial disadvantage compared to a person without disabilities.

4.3 The DDA lists several factors that may have a particular bearing on whether it would be reasonable for an employer to make a particular adjustment. These are:

- the effectiveness of the step in preventing the disadvantage;
- the practicability of the step;
- whether it is reasonable for the employer to expect the disabled person to co-operate;
- the financial and other costs of the adjustment and the extent of any disruption caused;
- the extent of the employer's financial and other resources;
- the availability to the employer of financial or other assistance to help make an adjustment.

4.4 Note that tribunals will take account of an enterprise's entire budget when considering the financial constraints in undertaking an adjustment. Financial or other help may be available from the Government "Access to Work" programme or other agencies.

Reasonable adjustments might include for example:

- altering working hours to enable, for instance, travel time to and from work to be included or otherwise reducing working hours;
- allowing the person to be absent during working hours for rehabilitation, assessment or treatment
- allocating a small part of the role to colleagues if there are one or two activities a person cannot perform

- providing equipment/resources to enable the person to perform a task
- acquiring or modifying equipment.

This list is not intended to be exhaustive. There may be solutions where adjustments can be expected to be made which do not fall under any of the above headings.

Reasonable adjustments for regular employment

4.5 Before coming to a final decision about permanent disablement for regular employment in any particular case, the IQMP will need to take into account, where appropriate, what adjustments the firefighter could reasonably be expected to receive and whether they could be effective.

4.6 It is recognised that it will be difficult for the IQMP to provide more than a general assessment of the sort of adjustments that an employer could reasonably be expected to provide for the firefighter to be able to carry out an activity of which he or she would be otherwise incapable.

4.7 It is for the FRA to decide whether reasonable adjustments will be made.

Part 5: The IQMP Assessment

5.1 There are normally three stages in performing the assessment. These are:

- Reading the guidance
- Reading the documents
- Completion of the medical certificate and referral back to the FRA.

5.2 The MA must examine the member in all cases, but the Scottish Government has taken the view that only in certain circumstances would the IQMP be expected to do so. In the majority of cases the IQMP would consider the report from the MA in the light of all other documentation provided and be able and comfortable to make the decisions using the information provided by the FRA. There may be cases where the IQMP decides that a face to face interview and examination is needed and such decisions will be left to the discretion of the IQMP. If the IQMP decides that he/she needs to actually see the firefighter, it will be the responsibility of the FRA to arrange a suitable appointment with the IQMP.

5.3 If the firefighter refuses to permit access to any of the medical records the two pension schemes and the compensation scheme allow for any assessment to be made on the basis of the information available but reference to this fact must be made when referring papers to the FRA.

5.4 In considering each case attention should be given to:

- How the condition might change over time, due to any fluctuations in the medical condition, and how this affects the member's functional ability.
- How pain might limit functional ability.
- The ability to repeat functional activities.
- The ability to perform activities safely, without substantial risk of harm to self or others.
- The possible effects of bio-psychosocial issues

5.5 For conditions which vary from day to day, a reasonable approach would be to choose the level of capability which applies for the majority of the days, with the proviso that the claimed level of capability on 'good' and 'bad' days is likely to be consistent with the clinical picture presented, the diagnosis and the overall pattern of activity in everyday life. If a person cannot repeat an activity with a reasonable degree of regularity - and certainly if they can perform the activity only once - then they should be considered unable to perform that activity.

5.6 The IQMP should perform the assessment and complete the certificates provided by the FRA. An assessment form which may be of help to the IQMP is attached as Annex A

PART 6 GLOSSARY OF TERMS

Disablement: In determining whether a disablement is permanent, the FRA will have regard to whether the disablement will continue until normal pension age (FPS) or normal retirement age (FPS(S)).

Subject to the paragraph below disablement means incapacity, occasioned by infirmity of body or mind, for the performance of duty.

Where it is necessary to determine the degree of disablement it shall be determined by reference to the degree to which the member's earnings capacity has been affected as a result of a qualifying injury. If as a result of such an injury, he/she is receiving in-patient treatment at a hospital he/she shall be treated as being totally disabled.

Independent Qualified Medical Practitioner: The IQMP is defined in the Firefighters' Pension Scheme, the Firefighters' Pension Scheme (Scotland) and the Firefighters' Compensation Scheme as "a medical practitioner holding a diploma in occupational medicine or an equivalent or higher qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State; and for the purposes of this definition "a competent authority" has the meaning given by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003.

Injury Includes disease

Normal Pension Age (FPS) – 55

Normal Retirement Age (FPS(S)) – 60

Pension: A pension under the Firefighters' Pension Scheme or Firefighters' Pension Scheme (Scotland)

Qualifying injury

References in the FCS to a qualifying injury are references to an injury received by a person without his/her own default, in the exercise of his/her duties as a firefighter.

For the purposes of the FCS an injury shall be treated as having been received by a person without his/her default unless the injury is wholly or mainly due to his/her own serious and culpable negligence or misconduct.

Regular firefighter In relation to any time after 29th February 1992 but before 13th September 2004, the expression means a wholetime member of a brigade appointed on terms under which he/she is or may be required to engage in firefighting whose appointment is not a temporary one.

In relation to any time on or after 13th September 2004 and before 1st October 2004 the expression means a whole or part-time member of a brigade, appointed on terms under which he/she is, or may be, required to engage in firefighting or, without a break in continuity of such an appointment, may be required to perform other duties as appropriate to their role as a firefighter (other than, or in addition to, engaging in firefighting) and whose appointment is not a temporary one.

In relation to any time after 1st October 2004 the expression means a person who is employed –

a) by a fire and rescue authority as a firefighter (whether whole time or part time) other than as a retained or volunteer firefighter, and

b) on terms under which he/she is, or may be, required to engage in firefighting or without a break in continuity of such employment, may be required to perform other duties appropriate to his/her role as a firefighter (whether instead of, or in addition to, engaging in firefighting) and whose employment is not temporary.

Regular employment This means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person's capacity for employment arises.

Retained member :

In relation to any time after 13th September 2004 but before 1st October 2004, the expression means a member of the fire and rescue service who

(a) is obliged to attend –

1) at the station to which they are attached for training development and maintenance duties for an average of 2 hours each week and; promptly, at any time, in response to a call; and

2) at any other station for reserve or standby duties in accordance with any orders he or she receives; and.

(b) receives a training fee and other such fees as appropriate in respect of those duties.

In relation to any time on or after 1st October 2004 and before 6 April 2006 the expression means a member of the fire and rescue service who is obliged to attend –

1) at the station to which they are attached for training development and maintenance duties for an average of 2 hours each week and; promptly, at any time, in response to a call; and

2) at any incident or other occurrence, or at any other station for standby duties during the employees period of availability.

In relation to any time after 6th April 2006, the expression is combined with that of a volunteer firefighter – see the definition of “Retained and volunteer firefighter” below.

Volunteer member of the fire and rescue service: a member of the fire and rescue service who is obliged to carry out the duties set out in paragraph a) of the definition of retained member, but does not receive a retaining fee or other fees, as appropriate, in respect of those duties.

Retained and volunteer firefighter in relation to any time on or after 6th April 2006 this means a person employed by an authority –

- a) as a firefighter, but not as a regular firefighter,
- b) on terms under which they are, or may be required to, engage in firefighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to their role as a firefighter (whether instead of, or in addition to, engaging in firefighting),
- c) otherwise than in a temporary capacity, and
- d) who is obliged to attend at such times as the officer in charge considers necessary, and in accordance with the orders that they receive.

Annex A

Assessment form for use by IQMPs

Member's personal details

SURNAME	
First name	
Date of birth	
Role (IQMP should ensure inclusion of rolemap)	
FRA number	
Address	
Postcode	
Telephone number	
Work	
Home	
Mobile	
E-mail address	

DETAILS OF THE INCAPACITY CONSIDERED FOR THE PURPOSES OF THIS OPINION

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

1. Walking and climbing stairs

2. Standing
3. Sitting
4. Lifting and carrying
5. Reaching , bending and twisting
6. Kneeling
7. Driving
8. Manual Dexterity
9. Use of keyboard and telephone
10. Vision
11. Hearing
12. Continence
13. Ability to communicate
14. Concentration by speech and writing
15. Decision making
16. Evaluating information
17. Coping with stressors
18. Stamina
19. Hours that can be worked
20. Enabling options/reasonable adjustments
21. Health and Safety implications

IQMP Decisions

Decision 1: Is firefighter permanently disabled from performing the duties of their role?

Decision 2: If yes to 1, can the firefighter undertake regular employment?

Decision 3: Has the permanent disability been caused by a qualifying injury?

Decision 4: If yes to 3, what is the degree of disablement?

Signature:..... Date.....