

Report to	Fire and Rescue Authority	
Date	19/03/18	
Lead Officer	Simon Smith, Chief Fire Officer	
Contact Officer	Julie Brown, Head of Finance	
Subject	Firefighters' Pension Schemes Additional Pension Benefits (APB)	

PURPOSE OF REPORT

- 1 To inform Members of current issues arising regarding the treatment of temporary promotion payments under the Firefighters' Pension Scheme (FPS 1992).
- 2 To ask the Fire and Rescue Authority to determine whether temporary promotion payments made to members of the FPS 1992 should be deemed to be pensionable and treated as Additional Pension Benefits or classified as non-pensionable payments.

EXECUTIVE SUMMARY

- 3 The Fire and Rescue Authority is required under the Firefighters' Pension Scheme (FPS) Regulations to make decisions on matters relating to the administration of the firefighters' pension schemes. The Authority is required to make a decision regarding the treatment of temporary promotion payments; the decision will then be incorporated into the Discretionary Policy which is to be reviewed in June.

RECOMMENDATIONS

- 4 Members are requested to consider each of the options presented and decide on the most equitable approach.

BACKGROUND

- 5 There has been uncertainty around pensionable pay for some time and regulations within the 1992 scheme were a little unclear. As a result, a change in legislation took place in July 2013.
- 6 The Firefighters' Pension Scheme (Amendment) (No.2) (England) Order 2013 (SI 1392) was introduced in July 2013. The 2013 order introduced new powers for employers to make certain temporary allowances, which satisfy the prescribed requirements, pensionable under additional pension benefit (APB) arrangements.

- 7 The prescribed requirements are as follows -
- (a) any allowance or supplement to reward additional skills and responsibilities that are applied and maintained outside the requirements of the firefighter's duties under the contract of employment but are within the wider functions of the job;
 - (b) the amount (if any) paid in respect of a firefighter's continual professional development;
 - (c) the difference between the firefighter's basic pay in their day to day role and any pay received whilst on temporary promotion or where he/she is temporarily required to undertake the duties of a higher role;
 - (d) any performance related payment which is not consolidated into standard pay.
- 8 The order provided protection for those members of the 1992 scheme that were in receipt of temporary emoluments and allowances which were being treated as pensionable pay under the 1992 scheme (i.e. being paid as at 01/07/13) to continue to be treated as pensionable pay for as long as they continue to receive them without a break in service.
- 9 Continual Professional Development (CPD) payments have been treated as APB since July 2013.

INFORMATION

Current Practice

- 10 Due to the complexities around interpretation of legislation regarding pensionable pay components and current legal cases covering the issue, the 2013 order discretion was not formally adopted by the Fire and Rescue Authorities in Wales. However, it is now prudent, following recent court cases and referrals to the Pension's Ombudsman, to review the treatment of temporary promotion and other allowances and emoluments.
- 11 Various options to address the 2013 changes have been considered by officers taking into account legal compliance and the necessity for a fair and equitable approach for FPS 1992 members.

- 12 Following review of the options, there are two suitable proposals for consideration. The first option is to treat temporary promotion as an Additional Pension Benefit from a future date; this is in line with the steps taken by the other FRAs in Wales. The second option is to treat temporary promotion as non-pensionable from a future date (Appendix 1).
- 13 The date from which to apply the changes will be in consultation with the appropriate representative bodies.

IMPLICATIONS

Wellbeing Objectives	None.
Budget	The decision may impact future actuarial valuations which in turn either reduces or places additional cost burdens on the Authority's annual budget.
Legal	Compliance with The Firefighters' Pension Scheme (Amendment) (No2) Order 2013.
Staffing	Potential impact on a FPS 1992 member's retirement decision making process. Potential impact on the acceptance of temporary promotions offered.
Equalities/Human Rights/ Welsh Language	No implications within the report.
Risks	Non-compliance with legislation.

OPTION 1 – IMPLEMENT FROM A FUTURE DATE

FOR	AGAINST
In line with legislation from implementation date only	Not complying with legislation from the period 01/07/13 to 31/03/18
Consistent and fair approach moving forward	Open to challenge
Similar to action taken by other FRAs in Wales (different implementation date)	May deter pension scheme members from accepting temporary promotion
Less administrative burden	Potential negative impact on employees who have been temporarily promoted since July13 (APB built up for each period)
No additional employ(ee) or (er) superannuation required. Move additional payment amounts to APB vehicle.	

OPTION 2 - TEMPORARY PROMOTION TREATED AS NON PENSIONABLE FROM FUTURE DATE

FOR	AGAINST
In line with legislation from implementation date only	Not complying with legislation from the period 01/07/13 to 31/03/18
From implementation date consistent and fair approach - in line with 2007 and 2015 schemes	Open to challenge
Similar to action taken by other FRAs in England (exception of date of implementation)	Not consistent with approach taken by FRAs in Wales
Reduces complexity	May deter members from accepting temporary promotion
	May not align with future action taken regarding the Norman v Cheshire case