

**DETAILED BRIEFING NOTE
FOR MPS ON DENYING FIREFIGHTERS BOTH A JOB AND A PENSION**

In the view of the FBU the ODPM/CLG misled parliament – as well as all other consultees and stakeholders - over amendments to the Firefighters Pension Scheme made in 2004.

- The 2004 amendment was presented to stakeholders and Parliament as being designed to allow firefighters whose ill health or injury prevented them from firefighting to be redeployed to other duties within the wider firefighter's role rather than being offered only retirement with a pension.
- Due to a subsequent change in guidance (see below) CLG are attempting to make it virtually impossible for any firefighter to receive an ill health or injury pension **even where no alternative job exists.**
- Firefighters have to satisfy high fitness standards and so are particularly at risk of ill health preventing them from continuing firefighting. Also, it is widely known that firefighters attending emergency incidents - which include terrorist attacks and major natural disasters - often go well beyond the call of duty to save life and assist those who were injured. Firefighters often test the very limits of health and safety to save life.
- As a result it has been the accepted position since 2004 that those medically unfit to continue active firefighting would either be re-deployed or retired with a pension.
- It cannot be correct that firefighters are facing dismissal without a pension because of ill health including injuries on duty. Members pay high pension contributions to reflect the need for ill health pensions where redeployment is not possible. This is an attempt to severely cut pension benefits and bypass consultation and Parliamentary scrutiny.
- In July 2007 three London firefighters found themselves without a job or pension.
- In Nottinghamshire a firefighter (working retained duty) was seriously assaulted by a member of the public at an incident. He too faces losing his fire service job (he has already lost his main employment as a result of the injury) and also being denied an ill-health/injury pension.
- Throughout the original consultation process (July-September 2003) and implementation of the amendment (Statutory Instrument laid before Parliament in July 2004), the explanation given by ODPM (now CLG) was that it was to allow fire authorities to keep firefighters in employment so they could then remain within the Pension Scheme.
- New guidance, contained in a fire service circular issued in September 2006, changed the effect of the amendment dramatically, making it virtually impossible for any firefighter to receive an ill health or injury pension.
- The significant change in the new guidance is evidence, in our view, that consultees (including the FBU) were misled during the original consultation process.

- In our view Parliament was actively misled when laying the Statutory Instrument before the Joint Committee on Statutory Instruments.
- We are asking for a return to the position reached in 2004 after the consultation and for the removal of the new guidance issued in September 2006 which is causing the problem.

CLG Guidance on ill-health retirements

Significant changes to guidance relating to the Firefighters Pension Scheme were made in September 2006 by the Department for Communities and Local Government. The decision of the Board of Medical Referees in the cases of the three London members was based upon that guidance.

The September 2006 guidance follows changes to the Scheme in 2004 which altered the definition of a Firefighter. The aim of this change – when introduced - was to allow more flexibility and to allow the possibility of re-deployment in cases where a firefighter could be found other suitable work within the firefighter’s wider job description but could not continue in an operational role.

The initial guidance from ODPM (**FSC 30/2004**) stated:

If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award.

Subsequently, this guidance has been amended in **FPS Circular 11/2006** which removed this key phrase.

2004 Guidance Fire Service Circular 30/2004 (our emphasis in bold)

*“Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of “regular firefighter” includes a requirement to engage in firefighting. This remains a term of eligibility for joining the FPS. However, the definition has been amended to allow a firefighter who subsequently becomes permanently disabled for firefighting while remaining fit for other related duties to continue as a member of the FPS. This is on condition that there has been no break in service. Consequently, if a FRA is of the view that the retention of a firefighter would be of value to the service, redeployment to other duties, as appropriate to the role of a firefighter, should be considered and would be allowable under FPS rules. **If the FRA cannot offer other employment, fitness to perform other duties would not be relevant and the person may be retired with an ill-health award.***

2006 Guidance (our emphasis in bold)

*Eligibility for full membership of the FPS is limited to regular firefighters only. The definition of “regular firefighter” includes a requirement to engage in firefighting and to perform other duties as appropriate to his role as a firefighter (other than, or in addition to, engaging in firefighting). **The test in assessing whether a regular firefighter ought to retire on the grounds that he is permanently disabled under Rule A15 is whether he is permanently disabled for firefighting and for performing other duties appropriate to the role.***

Recent CLG advice issued to Medical Practitioners

It is clear from the extracts above that CLG have re-written the guidance – they admit they have done so - to the detriment of members of the Pension Scheme. It is also a clear and significant departure from

the position outlined in briefings given to Parliament and stakeholders at the time the Scheme was amended.

CLG have recently issued advice to the Independent Qualified Medical Practitioners appointed under the Scheme (FPSC 8/2007, 5 September 2007). **The effect of this circular will be to apply this same logic to all cases where a medical retirement would be considered.**

This advice includes the following section (our emphasis in bold):

*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). **Provided the member can carry out one of the duties of the role he/she cannot be permanently unfit.** 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.*

It is difficult to imagine circumstances in which an individual could not perform **one** of the many duties contained within the “role” which includes some entirely desk-based work. The effect of this guidance is to end ill-health retirement and injury retirements. That was clearly not the intent of the changes made to the Statutory Instrument in 2004.

The aim of the original change in 2004 was to allow greater flexibility into the Scheme by allowing re-deployment to non-operational duties if this was appropriate. **But under the new guidance a pension will not be paid even if no such job exists.**

The effect of these changes will be to place medically unfit Firefighters in limbo. They will not be able to continue in their profession due to ill-health. They will not be entitled to a pension. They will also not be guaranteed redeployment within the wider role since there are few, if any, such (non-operational) jobs in existence within the Fire and Rescue Service.

28 July 2004: The Statutory Instrument making the amendment was laid before Parliament. The explanatory memorandum includes:

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

7. Policy background

7.1 Changes to the Firemen’s Pension Scheme (the “FPS”) are needed to meet commitments made in the White Paper “Our Fire and Rescue Service” (Cm 5808) in relation to ill-health retirement. These changes are as follows:

To broaden the definition of “firefighter” to allow a firefighter, who is no longer fit enough to engage in operational duties, to remain in the FPS rather than be retired with an ill-health pension. Such firefighters could be deployed on a range of other duties, including community safety. The current definition is one of the causes of the high level of ill-health retirements amongst firefighters.

7.4 All amendments have been the subject of consultation in accordance with section 26(6) of the Fire Services Act 1947. In addition, regular updates have been given to

scheme members and information has been posted on the ODPM website.

8. Impact

8.2 The impact on the public sector is that it will increase the flexibility available to fire and rescue authorities to employ regular firefighters on part-time duties, and allow them to retain in service staff who, whilst not fit for operational duties, are capable of doing other appropriate work. There are potential savings in costs as the amendments will help fire and rescue services improve their management of ill-health retirements and will enable also the retention of trained and experienced staff who wish to work part-time rather than whole-time.

4 September 2006: Firefighters Pension Scheme Circular 11/2006: "...We have revised the guidance which we have been giving to fire and rescue authorities when asked about the consequences of the amendment. The test in assessing whether a regular firefighter ought to retire on the grounds that he is permanently disabled under Rule A15 is whether he is permanently disabled for firefighting and for performing other duties appropriate to the role."

17 January 2007: FBU challenges DCLG on Circular 11/2006 at the Firefighters Pension Committee. Chairman, Martin Hill for DCLG, responds that "...the guidance given in circular 11/2006 clarified DCLG's view of the pension scheme. It could not be an interpretation of the Scheme. The decision of whether or not to retire a member on an ill-health pension remained with the FRA. The question of whether a member, who does not qualify for ill-health retirement, can be dismissed if no suitable job is available was an employment matter and not for the pension schemes."

This matter could be resolved relatively easily by the removal of the CLG guidance. The FBU, supported by the vast majority of organisations within the fire service, want a return to the position which existed immediately following the change in 2004.