

Circular Number:	FPSC 10/2006	Date Issued:	14/07/2006
Action:	For Information and action		
Title:	<i>The New Firefighters' Pension Scheme (NFPS) Medical Appeal Arrangements</i>		
Issued by:	Martin Hill Local Government and Firefighters' Pensions Division		

Summary:	<p>This circular advises Fire and Rescue Authorities on:</p> <ul style="list-style-type: none"> • progress with drafting of the NFPS order and related activities. It suggests action which authorities need to take; • changes to the contract with BUPA for the provision of Boards of Medical referees; and • reminds FRAs about the requirement to obtain the opinion of an independent qualified medical practitioner when considering questions under Rule H1(2).
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Addressed to:	Please Forward to:
The Clerk to the Fire and Rescue Authority	Pension and human resources managers
The Chief Fire Officer	Medical/Occupational health managers
	Active members of the FPS

Enquiries:

Pensions Team Leader:		
Martin Hill	martin.hill@communities.gsi.gov.uk	020 7944 8641
Firefighters' Pension Scheme Order 1992		
Andy Boorman	andy.boorman@communities.gsi.gov.uk	020 7944 8123
Anthony Mooney	anthony.mooney@communities.gsi.gov.uk	020 7944 8087
New Pension Arrangements Project		
Jean Archer	jean.archer@communities.gsi.gov.uk	020 7944 5862
Nitin Bhayani	nitin.bhayani@communities.gsi.gov.uk	020 7944 6781
Medical Appeals		
Maggie Smith	maggie.smith@communities.gsi.gov.uk	020 7944 6787
General Enquiries:	firepensions@communities.gsi.gov.uk firepensions-medical.appeals@communities.gsi.gov.uk	

1. New Firefighters' Pension Scheme (NFPS)

(i) NFPS Order

- 1.1 In FPS Circular 07/2006 we set out the intended arrangements for the introduction of the NFPS. Good progress is being made in drafting the Scheme Order on the basis of the Instructions ([Drafting Instructions](#)) discussed with the Firefighters' Pension Committee. In due course, the draft Order will be placed on the firepensions website and we would welcome comments on the drafting.

(ii) Workshops

- 1.2 We reported to the Firefighters' Pension Committee on the issues raised in the workshops on the NFPS which were held during May and June. A copy of the report is at the annex to FPC(06)18 ([Workshop Report](#))

(iii) New Scheme Options

- 1.3 We set out in section 4 of FPS Circular 07/2006, our initial proposals for the options exercise which will take place once the Scheme Order has been made. The exercise will give members of the Firefighters' Pension Scheme the opportunity to transfer to the NFPS.
- 1.4 Concerns were expressed by some practitioners attending the workshops about their preparedness for this options exercise.
- 1.5 It is expected that the exercise will take place between January and March 2007 rather than October and December 2006, as previously suggested. It is intended that all FRAs should act in concert to facilitate management of the exercise and ensure that publicity can be co-ordinated. Also, as the conversion factors for this exercise will probably be more favourable than those which will normal be available, there will be no leeway for any FRA to delay the exercise.
- 1.6 FRAs should review their preparedness and consider whether there are any steps they need to take in advance to ensure the smooth running of the exercise. For example, authorities which have not previously issued benefit statements to members of the FPS may wish to consider the advantage of running a data cleansing exercise now to reduce the level of queries they receive about the accuracy of personal data when the benefit statements are issued as part of the options exercise.
- 1.7 In order to help us review the arrangements, and to assess what further input we will need to make, we propose to carry out an assessment of preparedness. **We would be grateful if you would complete the pro-forma at Annex A and return it by Friday 11th August to Nitin Bhayani as indicated.**

(iv) Statement Packages and Guidance Notes

- 1.8 We have made clear that DCLG will support FRAs with the provision of model guidance and other relevant documentation. The first package of documents was issued with FRS Circular 07/2006.

Warning: the documentation will be subject to alteration until the NFPS Order has been made and the arrangements have been approved by Ministers and Parliament. We will ensure that the versions on our website are kept updated but it is important that, if any are used in the interim, the latest versions are downloaded direct from our website for immediate use.

- 1.9 Further documentation has now been prepared, and will be placed on the website, as follows:

- Guide for retained firefighters
- Guide regarding ill health arrangements
- Acknowledgement and decision form for the options exercise.

1.10 We are still working on the following document:

- Personalised benefit statement and transfer statement: explanatory notes

1.11 As was explained in the earlier circular, we have taken advice from a Communications Working Group and members of the Firefighters' Pension Committee in developing this material. We would welcome comments on the documents and in particular on ways in which we can ensure that it is clear and unambiguous.

(v) Unmarried partners

1.12 We provided with FPS Circular 07/2006 a Guide regarding nomination of dependent partner for survivor's pension which included a nomination form. A number of queries have arisen regarding those FPS members who, on the basis of having an unmarried partner, may wish to transfer to the NFPS as part of the planned options exercise. It is planned that membership of the NFPS should run from 6 April 2006 for all those who transfer over in the options exercise and it is therefore recommended that any members considering transferring for unmarried partner benefits should complete a nomination form as soon as possible. This will ensure that they would be covered in the interim period between 6 April 2006 and the commencement of the options exercise.

1.13 **Attached at Annex B is a letter which FRA's should issue to all current members of the FPS.** This letter provides general information on the new scheme and the planned options exercise. In addition it alerts members that an unmarried partner's nomination form can be completed now. If, at the end of the options exercise, the firefighter decides not to transfer to the NFPS, then the declaration form will become void and should be destroyed by the FRA.

2.0 Appeals to the Regional Board of Medical Referees

2.1 This section provides a report on the monitoring of the contract for the provision of the Regional Board of Medical Referees and advises on changes to the contract which affect cases referred from March 2006.

(i) Appeals processed

2.2 Since 2001, the number of appeals processed is as follows:

Year	2001	2002	2003	2004	2005
Number of cases where outcome known	69	91	53	104	94
Percentage upheld	25%	34%	36%	38%	25%

Outstanding at end 2005	50
Received January to end June 2006	43

Outstanding at end June 2006	44
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(ii) Cancellation of medical appeals

- 2.3 Paragraph 65 of Schedule 1 of the Firefighters' Pension Scheme (Amendment) (England) Order 2006 amends paragraph 8(2A) of Schedule 9 of the FPS so that an appellant who withdraws an appeal to a board of medical referees within a period of 21 working days prior to the date appointed for an interview or medical examination may be required by the fire and rescue authority to pay an amount not exceeding that payable by the authority in respect of the board's total fees and allowances. The previous provision referred to withdrawal within a period of 10 days prior to the date appointed. Under the terms of the extended contract, as amended, with BUPA Wellness (the service provider) this has been extended to ensure that costs that have been reasonably incurred can be recovered.
- 2.4 A similar provision is made at paragraph 9(3) of Schedule 5 of the Firefighters' Compensation Scheme.
- 2.5 The cancellation fees charged for cases referred to BUPA Wellness before the end of February are:-

No of working days prior to hearing	Fees for cases referred before end Feb 2006
21 - 11	Actual up to max £1800
10 -4	£2500
3	£3500
2	£3800
1	£4200

- 2.6 For cases referred from March 2006 see below.

(iii) Cases referred to ODPM /DCLG from March 2006

- 2.7 The contract with BUPA Wellness for the provision of the Board of Medical Referees ended at the end of February 2006. Lengthy negotiations with BUPA regarding price and the management of risk associated with Judicial Review have now been successfully concluded and the revised contract signed to extend to the end of April 2008. We apologise for the break in service arising from the difficulties we have experienced and hope that this has not caused too many difficulties.

2.8 When considering the extension of the contract much of the discussion focussed on the handling of judicial reviews. The number of these has increased over the last year with an impact on the post hearing workload for the Regional Board of Medical Referees and DCLG. As a consequence, BUPA Wellness have now engaged lawyers to advise on issues of law which might be raised. It is hoped that this will reduce the risk of judicial review and reduce the costs in the longer term. However, for the foreseeable future we have agreed that a sum be included for all appeals to cover the cost of referral to lawyers. Where the lawyers' costs prior to issue of the report exceed £350 the excess will be charged on a case by case basis.

2.9 With referral to lawyers, there is an increased possibility that BUPA will not accept papers which have not been correctly paginated: this has been requested in previous guidance we have issued. Medical records must be sorted into type and the pages numbered. When an individual appeals he/she waives the right to medical confidentiality with regard to related papers and HR may wish to collate the medical records rather than rely on occupational health teams who may not have the administrative capacity. DCLG do not have access to medical records and cannot check them. If they are not correct on receipt by BUPA, they will be returned to the FRA. In exceptional circumstances, BUPA may choose to collate the papers themselves. If they do so costs will be charged.

(iv) Fees for cases referred to BUPA from 1st March 2006

2.10	Standard fee for appeal	£5300
	Additional Board Member	Actual cost
	Medical Tests	Actual cost
	Additional copying/sorting of papers	Actual cost
	Excess cost of referral to lawyers	Actual excess
	Penalty for failing to meet the target for setting a hearing	- £250

Penalty for late reports:-

Received - working days from hearing	Reduction in fee	Fee payable on standard referral after 1st March 2006
1 -15	No reduction	£5300
16	£250	£5050
17 - 22	£500	£4800
23 - 28	£750	£4550
29 - 34	£1000	£4300
And so on for each 5 working days	+ £250	To nil

Late withdrawals /cancellations

No of working days prior to hearing	Charge for cases referred after 1st March 2006
21 to 11	Actual up to £2250
10 to 4	£3180
3	£4240

2	£4770
1	£5300

(v) **Reference to the IQMP**

- 2.11 Evidence from the processing of appeal cases, and anecdotal evidence from HR practitioners, indicates that FRA's are not always referring cases to an Independent Qualified Medical Adviser when considering questions under that Rule.
- 2.12 Since September 2004, Rule H1(2) requires the FRA to obtain the written opinion of an independent qualified medical practitioner before arriving at the determination of any question under Rule H1 (now also Rule 1 of Part 6 of the Firefighters' Compensation Scheme). The opinion of the IQMP is binding on the FRA. This process must be followed. Failure to do so is in breach of the statutory requirements and could lead to the auditor challenging the action taken. Furthermore, as part of the process supporting the new financing arrangements, we would expect auditors to check closely all income and expenditure entries in the Firefighters' Pension Fund, including the legitimacy of ill health retirement lump sum payments.

(vi) **Consideration of qualifying injury**

- 2.13 When considering whether or not there is a qualifying injury FRA's have to decide whether an injury falls under the definition of "qualifying " contained in Rule 7 of Part 1 of the Firefighters' Compensation Scheme (England) Order 2006 (formerly Rule A9 of the FPS). If satisfied from non - medical evidence that there is no qualifying injury, a decision can be made that there is no qualifying injury without first referring to the IQMP to consider whether there is a causal link between the disability and the alleged event or series of events. In these cases if a firefighter is dissatisfied with the FRA's decision the avenue for appeal is strictly to the Crown Court under Rule 3 of Part 6 of the FCS/Rule H3 of the FPS. However, matters are rarely so cut and dried that there may not be the possibility of a causal link between any disability and execution of duties, and we are finding that, in practice, cases are being referred for appeal under Rule 3 of Part 6/Rule H2 where the opinion of an IQMP has not been obtained.
- 2.13 Sorting matters out has caused considerable additional work, causing unnecessary delay in the processing of cases. **We would therefore recommend that all cases where it is likely to be asserted that there is a qualifying injury should be referred directly to the IQMP for an opinion before a decision is given by the FRA.** This means that only one certificate need be obtained from the IQMP as the questions of permanence and qualifying injury will be considered together, with only one route of appeal.
- 2.14 If processing of cases remains unsatisfactory, we will consider removing Model Medical Certificate A so that FRAs will have to use Certificate B and make a more conscious decision not to ask the IQMP to consider qualifying injury when referring only on the question of permanence

2.15 The requirement for referral to the IQMP also applies when reviewing cases, see below.

(vii) Reviews

- 2.16 From 1st April 2006, the FPS and the FCS have been amended to include a statutory requirement to review ill health and injury awards. In the case of ill-health awards the requirement is limited to cases where the individual has been in receipt of an ill-health pension for less than 10 years and is under the age of 60. We recommend that when cases are initially referred for IQMP consideration, the IQMP should be asked for the date when the case should be reviewed. If as a consequence of review it is found that the individual has become capable of performing the duties of the role from which he/she retired on grounds of ill health, the FRA must terminate the award or, in relevant cases, where he/she has been found capable of regular employment, the FRA must immediately terminate the higher tier ill health pension.
- 2.17 Decisions cannot be made on review without referral to the IQMP.

Martin Hill

DCLG PRO-FORMA : PREPAREDNESS FOR OPTIONS EXERCISE:

RECORDS	
Are service records up to date (e.g. scheme members date of entry into the service/scheme, marital status, etc)?	1.Yes <input type="checkbox"/> 2. No <input type="checkbox"/> 3. Don't Know <input type="checkbox"/>
When did you last conduct a data cleansing exercise?	1. 3 Months ago <input type="checkbox"/> 2. 6 Months ago <input type="checkbox"/> 3. Don't Know <input type="checkbox"/>
Are you planning to conduct an exercise before the options exercise begins	1. Yes <input type="checkbox"/> 2. No <input type="checkbox"/>
OPTIONS EXERCISE	
Are you aware when the options exercise must be conducted?	1.Yes <input type="checkbox"/> 2. No <input type="checkbox"/> 3. Don't Know <input type="checkbox"/>
Who should be contacted in connection with this exercise?	1. Contact Name: 2. Email Address..... 3. Phone Number.....
Please provide details of the pensions lead if different.	1. Contact Name: 2. Email Address..... 3. Phone Number.....
We are planning to run further workshops immediately prior to the options exercise, would you find this helpful?	1.Yes <input type="checkbox"/> 2. No <input type="checkbox"/> 3. Don't Know <input type="checkbox"/>
RESOURCES	
Have you resources to deal with the options exercise?	1.Yes <input type="checkbox"/> 2. No <input type="checkbox"/> 3. Don't Know <input type="checkbox"/>
What arrangements have you in place to ensure that the exercise will be concluded in the 3 months allowed ?	

Please add any further comments you wish to make about the Options Exercise below:

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Thank you for your help. Please email completed forms by Friday, 11th August to:
nitin.bhayani@communities.qsi.gov.uk

New Fire Pension Scheme – draft text of letter to all firefighters about the new scheme, the options exercise.

NEW FIRE PENSION SCHEME 2006

As you may know, a New Fire Pension Scheme (NFPS) came into effect on 6 April this year for new entrants to the fire service on or after that date. The purpose of this letter is to alert you to the introduction of the new scheme, to explain briefly what it might mean for you as a firefighter already in service and to explain the next steps.

All new entrants to the service from 6 April join the NFPS. Members of the current Fire Pension Scheme (FPS) will remain in FPS, but they will also have an opportunity later this year or early in 2007 to transfer to NFPS, if they wish.

If you choose to remain in FPS then the introduction of the new scheme should have no impact on you.

All serving firefighters are members of FPS unless they have elected by notice in writing not to pay pension contributions and have thereby opted out of the scheme. Those firefighters who had opted out of the scheme were advised that if they wished to apply to rejoin the FPS then they had to do so by no later than 5 April 2006. Any application to rejoin the scheme made from and including the 6 April 2006 will only be considered for entry to the NFPS.

Members' Guide for NFPS

A Members' Guide for NFPS is now available and outlines the benefits of the scheme. A copy can be obtained from[**FRA contact details or intranet link**]

Transferring to NFPS: the options exercise

You will have plenty of time to decide whether to stay in the FPS or transfer to the new scheme. It is planned that there will be a 3 month options exercise towards the end of the year or early in 2007 where FPS members will be allowed to join the NFPS and will have the opportunity of transferring their FPS service into the new scheme. Work is still underway on finalising the terms under which transfers will take place and in preparing the information package which will be given to all FPS members as part of the options exercise. We will contact you nearer the time with sufficient information to enable you to make a choice on whether to transfer or not. Ultimately, the decision on whether to transfer or not will rest with you. You do not need to decide until the options exercise whether to stay in FPS or transfer across, but you may wish to start thinking now about what is best for you.

Pensions for partners who are neither married nor in a civil partnership

An important new feature of NFPS is the provision for the payment of a pension for life to a firefighter's partner, even if they are not married to each other or in a civil partnership with each other, in the event of the firefighter's death. Such a benefit is not payable in the FPS, where adult survivor pensions are paid only to those who are married or in a civil partnership. Payment of a pension to a partner who was not married or in a civil partnership will not be automatic: a number of conditions must be satisfied and certain documentation completed. In particular, the NFPS member and their partner must have completed and sent to the pensions administrator a joint declaration form to confirm that they are living together; the partner is financially dependent on the member (or both are

financially interdependent); their relationship is exclusive, committed and long-term; and that the scheme member and nominated partner are free to marry or enter into a civil partnership.

Declaration forms (with more detailed guidance) are available from your pension's administrator [**FRA to put in contact/intranet link**] and may be completed and returned now. Completing a form at this stage does not commit you to joining the NFPS. If you do not opt to transfer to the NFPS your declaration form will simply lapse at the end of the options period.

If you are living with a partner who is not married to you or in a civil partnership with you then you are strongly advised to consider completing a declaration form without waiting to decide whether or not to join NFPS, as this will help to protect your partner's position. **If you were to die between 6 April and the 'options exercise' your partner would be able to submit a claim for a pension under NFPS but only if you had jointly completed a declaration form.** The fire authority would then consider the claim and determine whether an award should be made.

Further information

If you would like any further information on any of the issues covered in this notice, you should contact your pension's administrator at..... Information is also available on the website of the Department for Communities and Local Government at www.communities.gov.uk/firepensions