

Firefighters' Pension Scheme Delegations

Report of the Chief Fire Officer

For further information about this report please contact Rod Hammerton, Chief Fire Officer, on 01743 260201 or Germaine Worker, Head of HR and Administration, on 01743 260210.

1 Purpose of Report

This report results from a routine review of the discretionary powers of the Fire Authority under the Firefighters' Pension Scheme 2015. It puts forward a recommendation to adopt a voluntary policy in relation to Scheme Pays to reflect the current context and activity in this area.

2 Recommendations

Members are asked to

- a) Note the review of the Delegation of powers under the Firefighters' Pension Scheme 2015 (as set out at the Appendix A to this report) of which items 1-51 remain unchanged; and
- b) Consider and approve, or otherwise, the proposed policy at item 52 regarding Voluntary Scheme Pays as detailed within the report and summarised in Appendix B.

3 Background

The Firefighters' Pension Scheme 2015 (the Scheme) sets out a number of discretionary powers, which the Fire Authority may wish to exercise, having regard to the circumstances of an individual case in respect of the pension rights of its firefighters and firefighters' dependents.

In 2002, 2010 and 2014 the Fire Authority agreed delegations and policies in relation to the Firemen's Pension Schemes 1992 and 2006. In 2015, similar delegations and policies were established in relation to the new 2015 Scheme. As the Scheme Manager the Fire Authority are required to review these discretions at intervals to ensure they remain appropriate.

4 Review of Delegations to Officers and Policies

Appendix A lists the rules of the Scheme where discretionary power can be exercised. These were agreed in 2015. The Head of Human Resources and Administration and the Pensions Officer have reviewed these and no changes to existing discretions are proposed.

In undertaking the review, the impact of any current practice on the operation of the discretions is considered and on this occasion, there are no recommended changes.

5 Proposed new policy

The Pensions Officer has advised that there is a new policy that should be considered for adoption. This relates to 'Voluntary Scheme Pays' (VSP) in terms of whether a fire and rescue authority (FRA) can satisfy the tax charge on a members behalf using Voluntary Scheme Pays.

Mandatory Scheme Pays is already in existence and pension and taxation rules exist around it, however in certain circumstances this cannot be used (by the individual) to pay a relevant HMRC tax charge arising from their pension benefits as stated above.

Mandatory Scheme Pays

Individuals whose annual growth in pension savings during the Scheme's 'Pension Input Period' exceeds HMRC's standard Annual Allowance Limit ('HMRC AA Limit'), currently set at £40,000, and who have no unused Annual Allowance to carry forward from the previous three tax years will be subject to an Annual Allowance tax charge ('AA tax charge').

The individual can pay the AA tax charge from their own personal finances, however, the Finance Act 2004 provides that a pension scheme must provide a 'Scheme Pays' facility where all of the following qualifying conditions are met:

- i the HMRC AA limit (currently set at £40,000) has been exceeded in the pension scheme that the Scheme Pays election is made; and
- ii an AA tax charge exceeding £2,000 has been triggered; and
- iii the relevant time limits for making an election have been met.

Voluntary Scheme Pays

Where a member does not meet the conditions for Mandatory Scheme Pays 'MSP' to apply or they do not make their nomination in time then a scheme may decide to pay the member's annual allowance charge on a voluntary basis 'VSP'.

Changes to the tax rules now mean that some high earning members with income of more than £150,000 per annum are now subject to a Tapered Annual Allowance ('tapered AA') which reduces from £40,000 to £10,000 incrementally for those earning between £150,000 and £210,000 per annum.

Members who are subject to a tapered AA will incur an AA tax charge where their pension growth exceeds their tapered AA. The tapered AA will be lower than the £40,000 HMRC AA limit and therefore these members cannot use MSP to pay this charge.

We understand from the national Firefighters Pension Adviser that the Home Office is considering amendment to the legislation that would allow an FRA to use VSP in certain circumstances only. Until that happens, we are advised that it is for the FRA to consider their approach to this issue in a lawful and appropriate way.

Recent communication from the Firefighters' Pension Advisor explains the issue, the advice and the proposed conditions of application:

*Having taken Legal advice on behalf of FRA's, LGA can confirm that an FRA (including County Councils, combined Fire Authorities and Metropolitans) can offer Voluntary Scheme Pays arrangements in order to pay the tax bill where a member of the scheme cannot use mandatory scheme pays because **they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so**'.*

It is considered that FRAs should consider the test of 'exercised reasonably where there are sufficient grounds for doing so' to be in line with the two circumstances proposed by the Home Office and agreed by the Scheme Advisory Board:

- *Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.*
- *Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.*

The Fire Authority as the 'scheme administrator' have an express power under [Rule 2, paragraph 2](#) of the Modification of Scheme Regs SI 2011/1791, to allow for an adjustment to be made to the pension (ie in this case a scheme pays debit)

It is therefore proposed that the Fire Authority adopt a policy on this matter in line with the above advice i.e. that the Authority will satisfy a tax charge on a members behalf using VSP where the test of 'exercised reasonably where there are sufficient ground for doing so' are met.

Appendix B contains a copy of this proposed policy suggestion for item 52.

6 Financial Implications

There are no financial implications arising from this report.

7 Legal Comment

The Fire Authority have the necessary powers as set out within the body of this report to implement the recommendations in respect of offering Voluntary Scheme Pays arrangements.

Delegations of authority, such as those set out in this report and appendices, are necessary to enable officers and the Fire Authority's Pensions Panel to administer the schemes effectively into the future.

8 Initial Impact Assessment

This report contains merely statements of fact / historical data. An Initial Impact Assessment is not, therefore, required.

9 Equality Impact Assessment

There are no equality or diversity implications arising from this report. An Equality Impact Assessment is not, therefore, required.

10 Appendices

Appendix A

Firefighters' Pension Scheme 2015

Decisions to be made by, and discretionary powers of, the Fire Authority

Appendix B

Proposed General Policy of the Fire Authority

Appendix C

Local Government Association note on 'Voluntary Scheme Pays' in the Firefighters' Pension Schemes

11 Background Papers

There are no background papers associated with this report.

Firefighters' Pension Scheme 2015

Proposed Decisions to be made by, and discretionary powers of, the Fire Authority

2015 agreed Delegations reviewed as at October 2017

Key

- A:** Decision/action taken in accordance with determination of Fire Authority in individual cases. Decisions would be made by the Pensions Panel, or the Appeals Panel in cases relating to IDRP.
- B:** Decision/action taken in accordance with general policy of Fire Authority (once the policy has been made, the administration would be at level "D")
- C:** Decision/action delegated to Chief Fire Officer or Deputy Chief Fire Officer after consulting with the Treasurer on budgetary implications and the Legal Adviser on any legal issues.
- D:** Decision/action delegated to the Brigade Manager with responsibility for Human Resources after consulting with the Treasurer on budgetary implications and the Legal Adviser on any legal issues.

Where a decision has to be taken in respect of the Chief Fire Officer, Deputy Chief Fire Officer or Assistant Chief Fire Officer, the level at which the decision/action is taken should be "A" or "B" in all circumstances.

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|---|-------------------|---|---|---|
| | | A | B | C | D |
| 1 | Delegation (Regulation 5) The scheme manager must ensure that delegated powers are appropriate and current [Regulation 5 (2)] | | | | x |
| 2 | Opting into this scheme (Regulation 12) An optant-in will become an active member of the scheme with effect from the beginning of the first pay period following the date on which the option is exercised. There is an option for the scheme manager to vary the date on which the person becomes an active member, to such other time as the scheme manager considers appropriate. [Regulation 12 (5)] | | | | x |
| 3 | Opting out after the first three months (Regulation 16) An optant-out ceases to be in pensionable service with effect from the first day of the first pay period following the date on which the option is exercised. If the scheme manager considers that day to be in appropriate, it may vary the date to the first day of any later pay period as the scheme manager does consider appropriate. [Regulation 16 (2) (b)]. | | | | x |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|---|-------------------|---|---|---|
| | | A | B | C | D |
| 4 | <p>Pensionable pay (Regulation 17) The scheme manager has discretion to determine if continual professional development payments are to be treated as pensionable pay. [Regulation 17 (1) (d)].</p> <p><i>In 2014 the CFA determined that their policy is to follow existing policy on CPD payments and treat as pensionable pay</i></p> | | | | x |
| 5 | <p>Active membership (Regulation 19) A person who is on unpaid authorised absence can count the period as active membership if the scheme manager permits them to be treated as an active member during that period. (Presumably this would be linked to Regulation 111 (4) and subject to the member paying the appropriate contributions). [Regulation 19 (c)].</p> | | | x | |
| 6 | <p>Establishment of pension accounts: general (Regulation 28). The scheme manager must establish and maintain pension accounts for scheme members, but they may be kept in such form as the scheme manager considers appropriate. [Regulation 28 (2)].</p> | | | | x |
| 7 | <p>Closure and re-establishment of active member's account (Regulation 37). If a member has more than two active member's account and ceases pensionable service with less than three months' qualifying service in respect of one account, that account must be closed and benefits aggregated with one of the others; the member may select which one. If the member fails to choose, the scheme manager has discretion to choose. [Regulation 37 (3), (4) and (5)].</p> | | | | x |
| 8 | <p>Closure of deferred member's account after gap in pensionable service not exceeding five years. (Regulation 49). If a deferred member re-enters pensionable employment after a gap of five years or less, the scheme manager must close the deferred member's account and re-establish the active member's account, transferring entries from the deferred account. If the person had more than one relevant deferred member's account, they must select – within three months of re-entering scheme employment – which one should close. If they fail to make a selection, the scheme manager must make the choice for them. [Regulation 49 (3) and (4)].</p> | | | | x |
| 9 | <p>Employer initiated retirement (Regulation 62). An employer can determine that an active member aged 55 or over but under the age 60 who on the grounds of business efficiency is dismissed or has their employment terminated by mutual consent, can receive immediate payment of retirement pension without the early payment reduction. An employer may only use this discretion if the employer determines that a retirement pension awarded on this basis would assist the economical, effective and efficient management of its functions having taken account of the costs likely to be incurred in the particular case. [Regulation 62 (1) and (2)]</p> | | | x | |
| 10 | <p>Exercise of partial retirement option (Regulation 63). An active member aged at least 55 who would be entitled to immediate payment of pension, if they leave pensionable service and who claims payment of the pension, may opt to claim the whole of their accrued pension but continue in pensionable service. The person concerned must give appropriate notice to the scheme manager and the partial retirement option is taken to be exercised on a date agreed between the member and the scheme manager. [Regulation 63 (5)].</p> | | | x | |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|---|-------------------|---|---|---|
| | | A | B | C | D |
| 11 | <p>Review of ill-health award or early payment of retirement pension (Regulation 68). The scheme manager must have a policy for reviewing, at such intervals as it considers appropriate, the award of ill-health pensions where the recipient is under deferred pension age and has been receiving the award for less than 10 years, and for reviewing the early payment of deferred pension on ill-health grounds for so long as the recipient is below deferred pension age. [Regulation 68 (1) and (2)].</p> <p><i>In 2014 the CFA determined to follow guidance (on intervals) provided by the IQMP on assessment</i></p> | | | | x |
| 12 | <p>Consequences of Review (Regulation 69). If, following the review of a lower tier ill-health pension under Regulation 68, the scheme manager determines that the recipient is capable of performing the duties appropriate to the role from which the person retired on grounds of ill-health, the employer must consider whether or not to make an offer of re-employment. [Regulation 69 (3)].</p> | | | x | |
| 13 | <p>Commencement of pensions (Regulation 70). If a deferred member requests, and is entitled to, the early payment of retirement pension on grounds of ill-health, the scheme manager must determine that date of payment as being the date on which the person became incapable of undertaking regular employment because of infirmity of mind or body or, if that date cannot be ascertained, the date of the member's request for early payment. [Regulation 70 (7)].</p> <p>If a deferred member requests deferral of payment of a deferred pension beyond deferred pension age, or requests early payment with an early payment reduction before deferred pension age, the scheme manager will decide the payment date after the claim for payment has been made. [Regulation 70 (8)].</p> | | | x | |
| 14 | <p>Allocation election (Regulation 72). The scheme manager must give consent for the allocation of a portion of pension to a dependant who is not the spouse, civil partner or cohabiting partner of an active or deferred member. (Consent can be withheld if the scheme manager is not satisfied that the person nominated is not substantially dependent on the active member). [Regulation 72 (3) (b) and (4)].</p> | | | x | |
| 15 | <p>Adjustment of allocated benefit (Regulation 75). If a member who has made an allocation election dies after reaching age 75, and the amount of allocated pension does not qualify as a dependent's scheme pension under section 167 of the Finance Act 2004 (pension death benefit rules), the amount may be adjusted in a manner determined by the scheme manager. [Regulation 75 (1) and (2)].</p> | | | x | |
| 16 | <p>Meaning of "surviving partner" (Regulation 76). A cohabiting partner may be considered a "surviving partner" and potentially qualify for a pension provided they meet certain conditions, one of which is that they must have been in a "long-term relationship" – a continuous period of at least two years – at the date at which entitlement needs to be considered. The scheme manager has discretion to allow the person to qualify where the period is less than two years. [Regulation 76 (1) (b) (v) and (2)].</p> | | | x | |
| 17 | <p>Person to whom lump sum death benefit payable (Regulation 95). The scheme manager has absolute discretion as to the recipient of any lump sum death benefit payable. (Regulation 95).</p> | x | | | |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|--|-------------------|---|---|---|
| | | A | B | C | D |
| 18 | <p>Surviving partner's pensions and eligible child's pensions: suspension and recovery (Regulation 101). A scheme manager has the right to cease paying a surviving partner's pension and/or eligible child's pension and recover any payment made in respect of a pension where it appears to the scheme manager that the recipient made a false declaration, or deliberately suppressed a material fact in connection with the award. (This does not affect the scheme manager's right to recover a payment or overpayment under any other provision where the scheme manager considers it appropriate to do so.) [Regulation 101 (2) and (3)].</p> <p><i>In 2014 the CFA determined this was to be paid to child and only paid to parent or guardian in exceptional circumstances(in line with LGPS)</i></p> | | | x | |
| 19 | <p>Provisional awards of eligible child's pensions: later adjustments (Regulation 102). If children's pensions have been made to certain persons on the basis that they were eligible children and there were no others, and subsequently it appears that any of those children were not eligible, or there was a further eligible child to whom no payment has been made, or that a child born after the member's death is an eligible child, the scheme manager has discretion to adjust the amount of pensions as required in view of the facts as they subsequently appear. The adjustments may be made retrospectively. (This does not affect the scheme manager's right to recover a payment or overpayment under any other provision where the scheme manager considers it appropriate to do so.) [Regulation 102 (2) and (3)].</p> | | | x | |
| 20 | <p>Adjustment of benefits to comply with FA 2004 where members die over 75 (Regulation 104). If a member dies after reaching age 75 and any part of a pension to which a person becomes entitled on the death would not qualify as a dependant's scheme pension for the purposes of section 167 of the Finance Act 2004 (the person death benefit rules), the scheme manager has discretion to adjust the benefit payable to the person so that it would qualify under the section of the Act. [Regulation 104 (1) (a) and (2)].</p> | | | x | |
| 21 | <p>Member contributions (Regulation 110). Where there is a change in scheme employment or a material change which effects the member's pensionable pay in the course of a financial year and the revised amount falls into a different contribution rate band, the scheme manager must determine that this rate should be applied and inform the member of the new contribution rate and the date from which it is to be applied [Regulation 110 (5)].</p> <p>When identifying the appropriate contribution rate, a reduction in pay in certain circumstances as listed in Regulation 110 are to be disregarded. In addition, the scheme manager can specify the circumstances in a particular case where a reduction in pensionable pay will be disregarded. [Regulation 110 (7) (h)].</p> | | | | x |
| 22 | <p>Contributions during absence from work due to illness, injury, trade dispute or authorised absence (Regulation 111). Where an active member is absent from scheme employment because of illness or injury and not entitled to receive pensionable pay, or because of trade dispute or authorised unpaid absence, they may pay member contributions; if they do, the scheme employer may require that they should also pay employer contributions. [Regulation 111 (2), (3) and (4)].</p> | | | | x |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|---|-------------------|---|---|---|
| | | A | B | C | D |
| 23 | <p>Deduction and payment of contributions (Regulation 114). Member contributions due under Regulation 110 may be deducted by the scheme employer from each instalment of pensionable pay as it becomes due, unless another method of payment has been agreed between the scheme manager and the member [Regulation 114 (1)].</p> <p>Contributions due in respect of absence from work on reserved forces service leave may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951. [Regulation 114 (2)]. Contributions which the member is required to pay, or has elected to pay under Regulations 111 and 113 may be paid by a lump sum or by deduction from instalments of pensionable pay as agreed between the member and the scheme manager. [Regulation 114 (3)].</p> | | | | x |
| 24 | <p>Statement of entitlement (Regulation 135). The scheme manager must specify in a statement of entitlement the "guarantee date" date by reference to which the cash equivalent or club transfer value is calculated; this date must fall within the three months beginning with the date of the member's application for the statement of entitlement and within ten days ending with the date on which the member is provided with the statement. The scheme manager has discretion, if it believes reasonable, to extend this date to within six months of the date of the member's application if, for reasons beyond the scheme manager's control, the information needed to calculate the transfer value cannot be obtained before the end of the three month period. [Regulation 135 (4)].</p> | | | | x |
| 25 | <p>Request for acceptance of a transfer payment (Regulation 141). There is a time limit of one year from becoming an active member in which a person can request a transfer payment from a non-occupational pension scheme. The scheme manager has the discretion to extend this period. [Regulation 141 (3)].</p> | | | | x |
| 26 | <p>Transfer statement (Regulation 142). The scheme manager can require an active member to ask the scheme manager of a previous non-club pension scheme to provide a statement of the amount of transferred pension that the member would be entitled to count provided that the transfer date falls within two months of the date of the statement, [Regulation 142 (2)].</p> | | | | x |
| 27 | <p>Club transfer value statement (Regulation 144). The scheme manager can require an active member to ask the scheme manager of a previous club pension scheme to provide a statement of the amount of transferred pension that the member would be entitled to count provided that the transfer date falls within two months of the date of the statement. [Regulation 144 (2)].</p> | | | | x |
| 28 | <p>Appeal concerning entries on the certificate (Regulation 148). If a member is not satisfied with a certificate setting out the details in their pension account (s) as required under Regulation 146, they can require the scheme manager to deal with their disagreement under arrangement implemented by the scheme manager in accordance with the requirements of section 50 of the Pension Act 1995 (resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008. The scheme manager must have these arrangements in place. [Regulation 148 (1)].</p> | | | | x |
| 29 | <p>Determinations by the scheme manager (Regulation 151). It is the scheme manager that must determine whether a person is entitled to an award or to retain an award. [Regulation 151].</p> | | | X | |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|--|-------------------|---|-----|------|
| | | A | B | C | D |
| 30 | <p>Role of IQMP in determinations by the scheme manager (Regulation 152).1) The scheme manager must select an Independent Qualified Medical Practitioner to provide a written opinion in respect of medical matters which may only be decided by having regard to such an opinion. [Regulation 152 (1)].</p> <p>2) If a person wilfully or negligently fails to submit a medical examination by the selected IQMP and the IQMP is unable to give an opinion on the basis of the medical evidence available, the scheme manager can make the determination based on such medical evidence as the scheme manager thinks fit, or without medical evidence. (Regulation 152 (7))</p> | | | 2)x | 1) x |
| 31 | <p>Review of medical opinion (Regulation 153.)1) Where a member requests a review of an IQMP's opinion in the light of new evidence received by the scheme manager within 28 days of the member having received the opinion, the scheme manager may agree to giving the IQMP the opportunity of reviewing the opinion. [Regulation 153 (1)]</p> <p>2) Upon receiving the IQMP's response the scheme manager must confirm or revise its original determination and advise the member accordingly. [Regulation 153(4) and (5)].</p> | | | 2)x | 1)x |
| 32 | <p>Notice of appeal (Regulation 155). If a member wishes to appeal against a determination made by the scheme manager and their grievance lies in the medical opinion upon which the determination was based, they can appeal to a board of medical referees. The appeal must be made within 28 days of the date on which the member receives the relevant documents under Regulation 154 (4). If the appeal is not made within this time limit and the scheme manager is of the opinion that the person's failure to give notice within the required period was not due to the person's own default, the scheme manager has a discretion to extend the time limit for such period as the scheme manager considers appropriate, not exceeding six months from the date the Regulation 154 (4) documents were supplied. [Regulation 155 (2)].</p> | | | x | |
| 33 | <p>Reference of appeal to the board (Regulation 156 – see also Regulation 161). Where a member has given notice of appeal to a board of medical referees, before the board arranges a time and place for the interview and medical examination a member of the board will review the documents supplied to the board in accordance with Regulation 156. If the board member is of the opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded the board member will notify the Secretary of State accordingly. This will be copied to the scheme manager who must, in turn, send a copy of it to the scheme member advising that if their appeal is unsuccessful, the member may be required to pay the scheme manager's costs and requesting notification from the member as to whether, in the circumstances, they wish to continue with, or withdraw, the appeal. [Regulation 156 (8) to (12)].</p> <p><i>In 2014 the CFA determined to require appellant to pay under the terms stated in the order</i></p> | | | | x |
| 34 | <p>Procedure where appeal to be pursued (Regulation 157). The scheme manager must decide which persons will attend the interview as its representatives. The scheme manager must also decide whether or not to submit written evidence or a written statement (and must decide a response to any written evidence or written statement from the appellant). [Regulation 157 (6) to (9)].</p> | | | | x |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|--|-------------------|---|---|---|
| | | A | B | C | D |
| 35 | <p>Expenses of each party (Regulation 161). If the medical appeal board determines in favour of the scheme manager and states that in its opinion the appeal was frivolous, vexatious or manifestly ill-founded, the scheme manager can require the appellant to pay it such sum not exceeding the total amount of the fees and allowances payable to the board under Regulation 160 (1) as the scheme manager considers appropriate, [Regulation 161 (2)].</p> <p>If the appellant withdraws the appeal requesting cancellation, postponement or adjournment of the date appointed for interview and/or medical examination less than 22 working days before the date appointed, the scheme manager can require the member to pay it such sum not exceeding the total amount of the fees and allowances payable to the board under Regulation 160 (1) as the scheme manager considers appropriate. [Regulation 161 (3) (a)].</p> <p>If the appellant's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed or interview and/or medical examination less than 22 days before the date appointed, the scheme manager can require the member to pay it such sum not exceeding the total amount of the fees and allowances payable to the board under Regulation 160 (1) as the scheme manager considers appropriate. [Regulation 161 (3) (b)]</p> <p><i>In 2014 the CFA determined to require appellant to pay under the terms stated in the order</i></p> | | | | x |
| 36 | <p>Appeals on other issues (Regulation 163). If a member disagrees with a scheme manager's determination of award under regulation 151 and the disagreement does not involve an issue of a medical nature, the member can require the scheme manager to deal with the disagreement under requirements which the scheme manager must have in place in accordance with section 50 of the Pensions Act 1995 (requirement for dispute resolution arrangements) and the Occupational Pension Schemes (Internal Dispute Resolution Procedure Consequential and Miscellaneous Amendments) Regulations 2008 [Regulation 163].</p> | | x | | |
| 37 | <p>Commutation of small pensions (Regulation 167). If the pension entitlement of a member of the scheme, or the pension entitlement of a member's beneficiary, does not exceed the small pensions commutation maximum the scheme manager may pay the entitlement as a lump sum. This would, however, be subject to the consent of the recipient and must comply with the commutation provisions that apply in the circumstances. [Regulation 167 (3)]</p> | | | | x |
| 38 | <p>Payments for persons incapable of managing their affairs (Regulation 168). If it appears to the scheme manager that a person other than an eligible child who is entitled to benefits under the scheme, is by reason of mental incapacity or otherwise, incapable of managing his or her affairs, the scheme manager may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the scheme manager may determine, to be applied for the benefit of the person entitled. If the scheme manager does not pay the benefits in this way, the scheme manager may apply them in such a manner as it may determine for the benefit of the person entitled, or any beneficiaries of that person. [Regulation 168]</p> | | | x | |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|--|-------------------|---|---|---|
| | | A | B | C | D |
| 39 | <p>Payments due in respect of deceased persons (Regulation 169). If, when a person dies, the total amount due to that person's personal representatives under the scheme (including anything due at the person's death) does not exceed the limit specified in the Administration of Estates (Small Payments) Act 1965, the scheme manager can pay the whole or part of the amount due to the personal representatives or any person or persons appearing to the scheme manager to be beneficially entitled to the estate, without requiring the production of grant of probate or letters of administration. [Regulation 169].</p> | | | x | |
| 40 | <p>Forfeiture: offences committed by members, surviving partners or eligible children (Regulation 171). If a member, surviving partner or eligible child is convicted of a relevant offence, the scheme manager can withhold pensions payable under the scheme to a member, any person in respect of the member, a surviving partner or an eligible child, to such extent and for such duration as it considers appropriate. "Relevant offence" is defined in this Regulation. The definition includes offences injurious to the State (including treason) or likely to lead to a serious loss of confidence in the public service. There are certain conditions set out in the Regulation, e.g. it is only the part of the pension. [Regulation 171 (1), (2), (3) and (5)].</p> <p>Where a pension is withheld, the scheme manager can at any time, and to such extent and for such duration as the manager thinks fit, apply the pension for the benefit of any dependant of the member or restore it to the member. [Regulation 171 (4)].</p> | x | | | |
| 41 | <p>Forfeiture of pensions: offences committed by other persons (Regulation 172). If a surviving partner or eligible child is convicted of the murder of a scheme member from whose benefits their pension would be derived the scheme manager must withhold all of the survivor's or child's pension otherwise payable. However, if a surviving partner or eligible child is convicted of the manslaughter of the member or any other offence, apart from murder, of which the unlawful killing of the member is an element, the scheme manager has discretion as to whether or not to withhold the pension to which they would otherwise be entitled. The amount withheld must only be that part of the pension which exceeds any guaranteed minimum pension. If the conviction is subsequently quashed, the pension must be restored with effect from the day after the date on which the member died. If, after the conviction has been quashed, the person is again convicted of murder, manslaughter or an associated offence as outlined above, any restoration is cancelled. [Regulation 172 (1) to (5)].</p> | x | | | |
| 42 | <p>Forfeiture of lump sum death benefit: offences committed by other persons (Regulation 173). If a person is convicted of a relevant offence, i.e. the murder or manslaughter of the member, or any other offence of which the unlawful killing of the member is an element, the scheme manager must withhold all of any lump sum death benefit payable to that person. If, however, the conviction is subsequently quashed on appeal, the scheme manager may, to such extent and for such duration as it thinks fit, restore to the person the amount of benefit withheld. If, after the conviction has been quashed, the person is again convicted of murder, manslaughter or an associated offence as outlined above, any restoration is cancelled. [Regulation 173].</p> | x | | | |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|---|-------------------|---|-----|-----|
| | | A | B | C | D |
| 43 | Forfeiture: relevant monetary obligations and relevant monetary losses (Regulation 174). If a member has a relevant monetary obligation or has caused a relevant monetary loss, the scheme manager may, to such extent and for such duration as it considers appropriate, withhold benefits payable to that person under the scheme. "Relevant monetary obligation" and "relevant monetary loss" are defined in the Regulation. There are certain limits, e.g. the amount withheld may only be that which exceeds the person's guaranteed minimum pension and the scheme manager may only withhold it if there is no dispute about the amount or, if there is, there is a court order or the award of an arbitrator. The monetary obligation must have been incurred to the employer after the person became an active member and arising out of or connected with the scheme employment in respect of which the person became a member of the scheme, and arising out of the person's criminal, negligent or fraudulent act or omission. The procedure is set out in Regulation 176. [Regulation 174]. | x | | | |
| 44 | Set-off (Regulation 175). A scheme manager has a discretion to set off a "relevant monetary obligation" against a member's entitlement to benefits under the scheme, subject to certain conditions which are similar to those contained in Regulation 174 (Forfeiture). The procedure is set out in Regulation 176. [Regulation 175]. | x | | | |
| 45 | Payment on behalf of member of lifetime allowance charge (Regulation 178.) At a scheme member's request, the scheme manager may pay on the member's behalf any amount that is payable by way of the lifetime allowance charge under section 214 of the Finance Act 2004. The scheme manager may only comply with the request if the member pays it the amount in question on or before the date on which the event occurs or the member authorises the deduction of the amount from a lump sum becoming payable to the member under the scheme at the same time as the event occurs. [Regulation 178]. | | | | x |
| 46 | Evidence of entitlement (Regulation 184). 1) The scheme manager can require any person who is in receipt of a pension or may have entitlement to a pension or lump sum under the scheme to provide such supporting evidence as the scheme manager may reasonably require so as to establish the person's identity and their continuing or future entitlement to the payment of any amount the scheme. [Regulation 184 (1) and (2)]. 2) If a person fails to comply with the scheme manager's requirements in this respect, the scheme manager can withhold the whole or part of any amount that it otherwise considers to be payable under the scheme. [Regulation 184 (3)]. | | | 2)x | 1)x |
| 47 | Amount of accrued added pension may not exceed overall limit of extra pension (Schedule 1, Part 1, Paragraph 4). The total amount of accrued added pension must not exceed a certain limit. If it appears to the scheme manager that a member who has elected to make periodical contributions will exceed the limit the scheme manager may cancel the election (by written notice to the member). [Schedule 1, Part 1, Paragraph 4]. | | | | x |
| 48 | Member's election to make periodical contributions for added pension (Schedule 1, Part 1, Paragraph 7). If a scheme member wishes to make periodical payments for added pension, the scheme manager can set a minimum amount which must be paid. [Schedule 1, Part 1, Paragraph 7 (3)]. | | | | x |
| 49 | Periodical payments (Schedule 1, Part 2, Paragraph 8). If a scheme member wants to make periodical payments for added pension, but does not want them to be deducted from pensionable pay, the scheme manager may agree another method of payment. [Schedule 1, Part 2, Paragraph 8 (3)]. | | | | x |

| Provision of Firefighter's Pension Scheme 2015 | | Level of Decision | | | |
|--|---|-------------------|---|---|---|
| | | A | B | C | D |
| 50 | Periodical payments during periods of assumed pensionable pay (Schedule 1, Part 2, Paragraph 10). After a period of assumed pensionable pay or a period of reduced pay, the member may give written notice to the scheme manager authorising the employer to deduct the aggregate of payments – which would have been made but for the leave – from the member's pay during the period of six months from the end of the period of reduced pay. The scheme manager can extend this period of six months. [Schedule 1, Part 3, Paragraph 10 (4)]. | | | | x |
| 51 | Meaning of “tapered protection closing date” (Schedule 2, Part 1, Paragraph 3). The tapered protection closing dates for tapered protection members are given in the 1992 scheme tables in Schedule 2, Part 4. In most cases the appropriate closing date can be ascertained by reference to the band of dates in which the firefighter's birthday falls. The tapered protection date for a tapered protection member of FPS 2006 to whom paragraph 9 (5) or 21 applies (members returning to pensionable service) is determined by the scheme manager. [Schedule 2, Part 1, Paragraph 3 (3); Schedule 2, Part 2, Paragraph 9 (5); and Schedule 2, Part 3, Paragraph 21]. | | | | X |
| 52 | The FRA may offer Voluntary Scheme Pays arrangements in order to pay the tax bill where a member of the scheme cannot use mandatory scheme pays because they have a power of general competence, which may be exercised reasonably where there are sufficient grounds to do so. The proposed policy wording is set out at Appendix B | | X | | |

Proposed General Policy of Fire Authority

Where "B" has been suggested in the chart, i.e. that the decision / action should be taken in accordance with a general policy statement of the Fire Authority, the Fire Authority will need to consider the terms of the policy. The following are suggestions as to how the Fire Authority may wish to decide its policy (the numbers of each item correspond with the numbers in the chart). Once the policy has been made / accepted the delegation would be to level "D".

| Chart Item Number | Proposed Policy |
|-------------------|---|
| 52 | <p>That the Authority will satisfy a tax charge on a members behalf using Voluntary Scheme Pays (VSP) where the test of 'exercised reasonably where there are sufficient ground for doing so' are met. That test consisting of the two circumstances:</p> <ul style="list-style-type: none">• Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.• Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit. |

‘Voluntary Scheme Pays’ in the Firefighters’ Pension Schemes.

Background

Mandatory Scheme Pays (‘MSP’).

1. Individuals whose annual growth in pension savings during the Scheme’s ‘Pension Input Period’ exceeds **HMRC’s standard Annual Allowance Limit (‘HMRC AA Limit’)**, currently set at £40,000, and who have no unused Annual Allowance to carry forward from the previous three tax years will be subject to an **Annual Allowance tax charge (‘AA tax charge’)**.
2. The individual can pay the AA tax charge from their own personal finances, however, the Finance Act 2004 provides that a pension scheme must provide a ‘Scheme Pays’ facility¹ where all of the following qualifying conditions are met:
 - i. the HMRC AA limit (currently set at £40,000) has been exceeded in the pension scheme that the Scheme Pays election is made; and
 - ii. an AA tax charge exceeding £2,000 has been triggered; and
 - iii. the relevant time limits for making an election have been met.

Voluntary Scheme Pays ‘VSP’

3. Where a member does not meet the conditions for Mandatory Scheme Pays ‘MSP’ to apply or they do not make their nomination in time then a scheme may decide to pay the member’s annual allowance charge on a voluntary basis ‘VSP’.
4. Changes to the tax rules now mean that some high earning members with income of more than £150,000 per annum are now subject to a **Tapered Annual Allowance (‘tapered AA’)** which reduces from £40,000 to £10,000 incrementally for those earning between £150,000 and £210,000 per annum.

Members who are subject to a tapered AA will incur an AA tax charge where their pension growth exceeds their tapered AA. The tapered AA will be lower than the £40,000 HMRC AA limit and therefore these members cannot use MSP to pay this charge.

¹ A scheme pays facility works by having the pension fund pay the member’s tax charge initially. This is then repaid by the member as a debit is added to their pension once it comes into payment.

5. With the introduction of the 2015 Scheme, members of the 1992 Firefighters' Pension Scheme ('1992 Scheme') and 2006 Firefighters' Pensions Scheme ('2006 Scheme') who have transferred into the 2015 Scheme on or after 1 April 2015 will effectively be members of two pension schemes and will see pension benefit growth in both schemes until retirement:

By virtue of accruing their pension growth across two rather than one pension scheme, there is an increased likelihood that although the member's total annual pension growth across both schemes may exceed £40,000, the pension growth in any one of the schemes may fall short of the HMRC AA limit. As such, they will not be eligible to use MSP to pay the AA tax charge.

Home Office Proposal

6. At their meeting of 6th March 2017, the Firefighters Scheme Advisory Board considered and agreed an initial proposal from the Home Office to amend the Firefighter Pension Regulations to allow the charge to be met in the circumstances below using Voluntary Scheme Pays (**VSP**)
 - (i) transitional members with pension growth of over £40,000 across both schemes (HMRC AA limit) and a corresponding tax charge, to use the scheme to pay this cost initially, before it is repaid by a pension debit added to the member's pension when it comes into payment
 - (ii) members subject to a tapered AA, to use the scheme to pay their charge initially and then this be repaid via a pension debit. For this option, it is also recommended that the member should be required to make an initial contribution of £2,000 from their own finances towards the resultant AA tax charge.
7. It is now for the Home Office to seek the new administration's views on the proposal after the General Election. Assuming this is taken forward the working assumption is that these changes would be introduced via an amendment to the pension scheme regulations rather than guidance. Legislative amendments take time and therefore will not be introduced in the short term.
8. **It is important to note that this is simply a proposal at this time and is not a guarantee that legislation will change. It will be dependent on a number of factors.**
9. Therefore unless or until that legislation is introduced it is for the FRA to consider their approach to this issue ensuring that what they do is both lawful and appropriate.

Can an FRA operate Voluntary Scheme Pays?

10. This note therefore considers whether FRAs have the ability to offer **Voluntary Scheme Pays 'VSP'** without an amendment to the Firefighter Pension Regulations, and that it is both lawful and appropriate.
11. LGA has recently sought legal advice on behalf of English FRAs, in order to determine whether an FRA can offer voluntary scheme pays, without the need for a change to legislation.
12. **The legal advice was prepared solely for the Local Government Association ("LGA"). Sharing of this legal advice does not amount to a waiver of legal privilege by Eversheds Sutherland.**
13. To operate voluntary scheme pays there are two different steps.
 1. The first is for the Fire Authority to pay the annual allowance charge on behalf of the scheme member to HMRC
 2. The second is for the Fire Authority to adjust the members benefit to reflect the payment made by the administrator

Step 1 – Can the Fire Authority satisfy a member's annual allowance charge on a voluntary basis?

14. The legal advice we have sought opines 'yes, we consider that it is possible for an FRA to operate voluntary "scheme pays"'.

The instruction to Eversheds Sutherland from LGA was

"Does a FRA have the power to agree to voluntary "scheme pays", taking into account both the relevant provisions of the FPS Regulations and the FRA's general powers, and to pay the member's tax liability from the Firefighters' Pension Fund (the "FPF") maintained under the FPS Regulations?"

15. The short answer was 'yes' the longer answer (paraphrased) was 'yes because they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so'.

16. Extract from the 'executive summary' of the legal advice

3. In relation to the specific questions posed:

3.1 Yes, we consider that it is possible for a FRA to operate voluntary "scheme pays":

3.1.1 A FRA which is a county council in England can operate voluntary "scheme pays" relying on s.1 of the Localism Act 2011 and reg.2 of the Modification Regulations. It would be possible to construct an argument that the necessary powers are conferred by virtue of s.111 of the Local Government Act 1972, but the position is less clear-cut than under the Localism Act.

3.1.2 For those FRAs which are metropolitan county FRAs or created by Order as a combined FRA the power to operate such a scheme is derived from s.5A of the Fire and Rescue Services Act 2004 which was inserted by s.9 of the Localism Act 2011.

3.1.3 Where a FRA agrees to operate voluntary "scheme pays", it can properly pay the amount of the tax charge which is due to HMRC from its FPF without contravening the FPS Regulations.

17. Extract from the 'detailed advice' of the legal advice

3.2 First, as regards the question of whether a FRA may agree to meet a member's liability to the annual allowance charge, the arrangements for the administration of the FPS are set out in regulations which are complex in nature and very prescriptive. This is true of many areas of local government activity, and through the Localism Act 2011 the then Government introduced a means by which specific regimes can be supplemented by the exercise of a broad general power of competence for local authorities.

3.3 Those FRAs which are county councils may exercise this power to enter into the necessary arrangements with the member and HMRC. This power cannot be exercised where there is express prohibition of the action proposed. However, since there is no express prohibition of the action proposed here, the FRA may participate in such an arrangement.

3.4 The power of general competence, like all local authority powers, must be exercised reasonably. The FRA must be satisfied that there are sound reasons to make the payments and that the interests of the authority are not harmed by so doing.

3.5 We believe that there are sufficient grounds on which the authority could conclude that there are sound reasons for offering a voluntary "scheme pays" facility, given that (for instance) the effect of the recently introduced tapered annual allowance is that scheme members may now face a substantial tax charge without being able to access the mandatory "scheme pays" facility (because the latter provisions remain based upon the standard annual allowance). Similarly, the interests of the authority will not be harmed, provided that the authority is able to make a consequential adjustment under the Modification Regulations, because the payment will ultimately be met from the member's benefit entitlement, and because the authority will have discretion as to when to offer voluntary "scheme pays", meaning that the administrative burden of such arrangements can be retained within manageable bounds.

3.6 It should be noted that the Localism Act 2011 provisions apply only to English local authorities.

3.7 For those English fire and rescue authorities which are not county councils there is power in the Fire and Rescue Services Act 2004 to enter into voluntary "scheme pays" arrangements subject to the same principles and constraints as apply to county councils.

3.8 Section 5A of the Fire and Rescue Services Act 2004 was inserted by s.9 of the Localism Act 2011. This provides as follows:

“Powers of certain fire and rescue authorities

(1) A relevant fire and rescue authority may do—

(a) anything it considers appropriate for the purposes of the carrying-out of any of its functions (its “functional purposes”),

(b) anything it considers appropriate for purposes incidental to its functional purposes,

(c) anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,

(d) anything it considers to be connected with—

(i) any of its functions, or

(ii) anything it may do under paragraph (a), (b) or (c), and

(e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.

(2) A relevant fire and rescue authority's power under subsection (1) is in addition to, and is not limited by, the other powers of the authority.

(3) In this section “relevant fire and rescue authority” means a fire and rescue authority that is—

(a) a metropolitan county fire and rescue authority,

(b) the London Fire and Emergency Planning Authority,

(c) constituted by a scheme under section 2, or

(d) constituted by a scheme to which section 4 applies.”

[Sections 2 and 4 relate to combined FRAs.]

3.9 Reliance upon s.111 of the Local Government Act 1972 requires the FRA to be satisfied that it is doing something “*which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions*”. The purpose of the incidental power is to enable actions to be taken in support of statutory functions, so it is necessary to identify the function before the authority can be said to be acting incidentally to it. The functions of a local authority acting as a FRA and as scheme administrator (for tax purposes) are defined by statute and regulation, and it can be argued that entry into a voluntary “scheme pays” arrangement is incidental or conducive to the performance of those functions (though the position is necessarily not as clear-cut as with the general power of competence under the Localism Act). Again, the test of reasonableness is to be applied.

‘Exercised reasonably where there are sufficient grounds for doing so’

18. The power of general competence that allows an FRA to satisfy an annual allowance charge on a voluntary basis, must be exercised reasonably and the FRA must be satisfied there are sound reasons for doing so.
19. LGA consider that the circumstances below proposed by the Home Office and agreed by the Scheme Advisory Board should be considered as sound reasons.
- Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.
 - Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.
20. Any fire authority wishing to make a Voluntary Scheme Pays arrangement for reasons outside of the two listed are advised to consider whether to do so is a reasonable exercise of their powers and they would have sound reasons for doing so. For example they may not consider allowing a VSP arrangement for a member who would have been eligible for Mandatory Scheme Pays but did not notify the authority within the statutory limit to be a reasonable exercise of their powers.

Step 2 - Can a fire authority adjust a members benefits to reflect the payment made?

21. Having established that the fire authority has the vires in order to satisfy the members charge. The second question for consideration, is does the Fire authority have the power to adjust the members benefit (ie the scheme pays debit) to recover the charge?
22. The Modification of Scheme Rules [\[SI 2011/1791\]](#), Rule 2, Paragraph 2 allows for such an adjustment to be made to the pension (ie the scheme pays debit)

2.—(1) This regulation applies where a scheme administrator of a registered pension scheme (“the scheme”) satisfies all or part of a member’s liability to the annual allowance charge, either on a voluntary basis or pursuant to a liability under section 237B of the Finance Act 2004(1).

(2) The rules of the scheme shall be modified so as to allow for a consequential adjustment to be made to the entitlement of the member to benefits under the scheme on a basis that is just and reasonable having regard to normal actuarial practice. This paragraph is subject to paragraph (3).

(3) Any modification to the scheme’s rules made by virtue of paragraph (2) is subject to section 159 of the Pension Schemes Act 1993(2) or section 155 of the Pension Schemes (Northern Ireland) Act 1993(3) (inalienability of guaranteed minimum pension etc).

23. The intent of this regulation is explicitly laid out in the explanatory memorandum paragraph 2.1

This instrument provides that where a scheme administrator of a registered pension scheme satisfies an annual allowance charge on behalf of a member of the pension scheme from the member's pension benefits, any rules of the pension scheme which prevent such an adjustment to the member's pension benefits are modified to allow for such adjustments.

For the avoidance of doubt who is the 'scheme administrator'?

24. The modification of scheme rules refers to the 'scheme administrator' for the avoidance of doubt, LGA sought legal guidance onto whom this refers in the case of a Fire Authority.

Does a FRA count as the "scheme administrator" for the purposes of reg.2(1) of The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 (the "**Modification Regulations**"), taking into account the effect of The Registered Pension Schemes (Splitting of Schemes) Regulations 2006 (the "**Split Scheme Regulations**")?

25. The legal advice opines that the FRA in this case is the 'scheme administrator'.

4.1 Yes. The Split Scheme Regulations provide in reg.2(1)(a) that all registered pension schemes listed in Schedule 1 to the regulations are to be treated as "split schemes". Both the 1992 scheme and the 2015 scheme are listed by name, and although the 2006 scheme (the NFPS) is not expressly listed by name, it is clear that the intention is for the reference in Sch.1 to the "Firefighters Pension Scheme" to cover both the 1992 and the 2006 schemes, since reference is made expressly to s.34 of the Fire and Rescue Services Act 2004, which is the enabling legislation for the 2006 scheme.

4.2 On the basis that all three FPS schemes are to be treated as "split schemes", this therefore means that under reg.3(2) of the Split Scheme Regulations, in the provisions referred to in Schedule 3 to those regulations, "any reference to the scheme administrator shall be read as a reference to the sub-scheme administrator". Schedule 3 includes the Modification Regulations.

4.3 Under reg.1, the "sub-scheme administrator" for a split scheme is "the scheme administrator of a sub-scheme appointed in accordance with the rules of the split scheme to be responsible for the discharge of the functions conferred or imposed on the sub-scheme administrator by or under these Regulations".

4.4 In relation to the 2015 scheme, this is clearly the FRA as "scheme manager" for the purposes of the 2014 Regulations. Under reg.177 of the 2014 Regulations:

*"177 Scheme administrator for the purposes of the Finance Act 2004
The scheme manager is appointed to be responsible for all liabilities and responsibilities connected with the functions conferred or imposed on the scheme administrator by or under Part 4 of FA 2004 which the scheme manager assumes as sub-scheme administrator under regulation 3 of, and Schedule 3 to, the Registered Pension Schemes (Splitting of Schemes) Regulations 2006."*

4.5 In relation to the 2006 scheme and the 1992 scheme, there is no explicit statement under either the 2006 Order or the 1992 Order confirming who is to act as scheme administrator for the purposes of the Finance Act 2004. However, given that under both sets of provisions, the FRA is expressly required to deduct tax / lifetime allowance charges which are due on any payments, it can be inferred that the intention was for the FRA also to be the scheme administrator for Finance Act purposes.

4.6 Therefore, a decision by a FRA to operate voluntary "scheme pays" would constitute a "scheme administrator" satisfying "all or part of a member's liability to the annual allowance charge" for the purposes of reg.2(1) of the Modification Regulations. As such, it would trigger the operation of reg.(2)(2), which would override the provisions of the FPS to the extent needed to make the "consequential adjustment" to the member's benefit entitlement.

Summary

26. In certain circumstances, an individual cannot use Mandatory Scheme Pays 'MSP' to pay a relevant HMRC tax charge. This note considers whether an FRA can satisfy the tax charge on a members behalf using Voluntary Scheme Pays 'VSP'
27. The Home Office is considering amendment to the legislation that would allow an FRA to use 'VSP' in certain circumstances only. However, unless or until that legislation is introduced it is for the FRA to consider their approach to this issue ensuring that what they do is both lawful and appropriate.
28. Having taken Legal advice on behalf of FRA's, LGA can confirm that an FRA (including County Councils, combined Fire Authorities and Metropolitans) can offer Voluntary Scheme Pays arrangements in order to pay the tax bill where a member of the scheme cannot use mandatory scheme pays because they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so'.
29. It is considered that FRAs should consider the test of 'exercised reasonably where there are sufficient grounds for doing so' to be in line with the two circumstances proposed by the Home Office and agreed by the Scheme Advisory Board:
- Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.
 - Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.
30. The Fire Authority as the 'scheme administrator' have an express power under [Rule 2, paragraph 2](#) of the Modification of Scheme Regs SI 2011/1791, to allow for an adjustment to be made to the pension (ie in this case a scheme pays debit)

Final Note

31. This note was prepared on 31st May 2017 for Fire Authorities consideration by the Local Government Association. It does not constitute legal advice and should not be treated as so.

Contact officer: Clair Alcock
Position: Firefighters Pension Adviser
Phone no: 07958 749056
E-mail: Clair.alcock@local.gov.uk